

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**





ORIGINAL

76-7060

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United States Court of Appeals  
FOR THE SECOND CIRCUIT

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THE SANKO STEAMSHIP CO., LTD.,  
*Plaintiff-Appellant,*  
*against*

NEWFOUNDLAND REFINING COMPANY, LIMITED,  
NEWFOUNDLAND REFINING COMPANY LIM-  
ITED U.S.A., PROVINCIAL BUILDING COMPANY  
LIMITED, PROVINCIAL REFINING COMPANY  
LIMITED, PROVINCIAL HOLDING COMPANY LIM-  
ITED and SHAHEEN NATURAL RESOURCES  
COMPANY, INC.,

*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT,  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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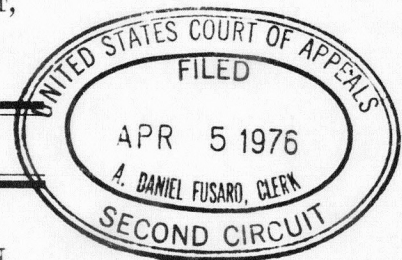
JOINT APPENDIX

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BIGHAM ENGLAR JONES & HOUSTON  
*Attorneys for Plaintiff-Appellant*  
99 John Street  
New York, New York 10038  
(212) 732-4646

MANNING, CAREY & REDMOND  
*Attorneys for Defendants-Appellees*  
122 East 42nd Street  
New York, N. Y. 10017  
(212) 867-1040

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A 1  
DOCKET ENTRIES

PLAINTIFFS

THE SANKO STEAMSHIP CO. LTD.

DEFENDANTS

NEW FOUNDLAND REFINING CO. LTD.  
NEWFOUNDLAND REFINING CO. LTD.U.S.  
PROVINCIAL BUILDING CO. LTD.  
PROVINCIAL REFINING CO. LTD.  
PROVINCIAL HOLDING CO. LTD.  
SHAHEEN NATURAL RESOURCES CO. INC.

CAUSE

Breach of contract -Marine- Failure to pay charter hire by defts under the  
terms & conditions of three (3) charter parties entered into with  
ptf. on Aug. 8, 1972.

rb

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ATTORNEYS

BIGHAM ENGLAR JONES & HOUSTON  
99 John St., NYC 10038  
732-4646

Manning, Carey & Redmond  
122 East 42nd St.  
N.Y.C. 10017-867-1040



# A 2

## Docket Entries

SANKO STEAMSHIP CO. LTD.

V. NEWFOUNDLAND REFINING CO. LTD. ETAL

76 Civ 0756 WK

PAGE 2

76 Civ 0756 WK

DATE	NR.	PROCEEDINGS
02-17-76	1-	Filed complaint & issued summons.
02-18-76	(2)	Filed plttf's affidavit & show cause order for an order of attachment with temporary restraining order ret. 2-20-76 at 2:PM. RM. 905.
02-18-76	(3)	Filed Bond undertaking on temporary restraining orders in the sum of \$300,000.00 by Insurance Co. of North America.
02-20-76	(4)	Filed affidavit of Roy M. Furmark in opposition to plttf's motion for an order of attachment.
02-20-76	---	Filed Memo-endorsed on affidavit of Roy M. Furmark filed this date; This order is reinstated & exing out is to be ignored. Knapp, J.
02-20-76	(5)	Filed transcript of record of proceedings dated 2-9-76. Temporary restraining order is vacated. Motion for order of attachment is denied. Complaint dismissed. Knapp, J.
02-20-76	(6)	Filed Judgment: The stay of the dismissal order is ext. until 5:P.M. February 24, 1976, etc. Ordered that deft's have judgment against plttf. dismissing the complaint. Judgment Ent. Clerk. m/n Ent. 2-20-76.
02-20-76	(7)	Filed plttf's notice of appeal to the USCA from order dismissing complaint Mailed copy to Manning, Carey & Redmond.
02-20-76	(8)	Filed Bond undertaking for costs on appeal in the sum of \$250.00 by Federal Insurance Co.
02-24-76	(9)	Filed Summons with marshals return. Served. Newfoundland Refining Co. Ltd. by P. Gandert on 2-19-76. Newfoundland Refining Co. Ltd. U.S.A. by P. Gandert " 2-19-76. Shaheen Natural Resources Co. Inc. " " " " 2-19-76.
02-27-76	(10)	Filed certificate of Mailing of summons & complaint by registered mail to: PROVINCIAL REFINING CO. LTD. 85 Elizabeth Ave. St. John's Newfoundland, Canada-Ret. Rec. Received 242512 on 2-27-76  PROVINCIAL BUILDING CO. LTD. 85 Elizabeth Ave. St. John's, Newfoundland, Canada-Ret. Rec. Received 242511 on 2-27-76  Provincial Holding Co. Ltd. 85 Elizabeth Ave. St. John's, Newfoundland, Canada-Ret. Rec. Received 242513 on 2-27-76
02-27-76	(11)	Filed plttf's affidavit & show cause order Re: attachment ret. 3-3-76.
02-27-76	(12)	Filed Transcript of record of proceedings taken on 2-19-76.
03-01-76	(13)	Filed True copy of order from the U.S.C.A. Ordered that action is remanded to Judge Knapp for the purpose of permitting plttf-appellant to move within 24 hours from the signing of this order for leave to complete the record among the various deft's. Stay as contained in judgment entered. on 2-19-76 is continued in its present form pending determination of this appeal. So ordered. Oakes, J., Feinberg, J. & Graafeiland, J. Mailed copies.
03-03-76	(14)	Filed affidavit of J.H. Parker in support of plttf's contention Re: attach assets of deft's.
03-03-76	(15)	Filed plttf's memorandum of law on remand from the U.S. Court of Appeal for the Second Circuit.
03-04-76	(16)	Filed Mem <sup>o</sup> Order #43995: Ordered that the order vacating the TRO is stay until 3-11-76 at 5:p.m. on conditions as indicated. Knapp, J.
03-05-76	(17)	Filed plttf's notice of appeal to the USCA from order dismissing the complaint. Mailed notice to Manning, Carey & Redmond.

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Docket Entries

76 Civ. 0756      Sanko Steamship Co. Ltd.      vs. Newfoundland Refining Co. Ltd. et al

D. C. 110 Rev. Civil Docket Continuation

Page #2

JUDGE KNAPP

DATE	PROCEEDINGS
3-09-76	Filed deft's notice of appeal to the U.S.C.A. from order entered. 3-4-76. Mailed copy to Bigham Englar Jones & Houston.
3-17-76	Filed order on consent assending Judge Knapp's memorandum & order dated Mar 4-76 to delete certain portions of said memo & order & referring to a magistrate attachability of funds and extending the order of Judge Mulligan staying the order of Mar 4-1976 vacating the temporary restraining order to 10 days after I issue further findings based on findings of the magistrate. Knapp, J.



A        4  
COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

THE SANKO STEAMSHIP CO., LTD.,	:	
	:	
Plaintiff,	:	<u>COMPLAINT</u>
	:	
-against-	:	75 Civ.
	:	
NEWFOUNDLAND REFINING COMPANY, LIMITED,	:	
NEWFOUNDLAND REFINING COMPANY LIMITED	:	
U.S.A., PROVINCIAL BUILDING COMPANY	:	
LIMITED, PROVINCIAL REFINING COMPANY	:	
LIMITED, PROVINCIAL HOLDING COMPANY	:	
LIMITED and SHAHEEN NATURAL RESOURCES	:	
COMPANY, INC.,	:	
	:	
Defendants.	:	

-----y

Plaintiff, THE SANKO STEAMSHIP CO., LTD.,

by its attorneys, BIGHAM ENGLAR JONES & HOUSTON,

for its complaint against defendants, respectfully

allege upon information and belief as follows:

1. This is an Admiralty and Maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.
2. At all relevant times plaintiff was and still is a legal entity organized and existing under and by virtue of the Laws of the Empire of Japan.
3. At all relevant times all defendants except SHAHEEN NATURAL RESOURCES COMPANY, INC. and NEWFOUNDLAND REFINING COMPANY LIMITED U.S.A. were and still are corporations organized and existing under and by virtue of the Laws of the Province of Newfoundland,



A        5  
*Complaint*

Canada; NEWFOUNDLAND REFINING COMPANY U.S.A. being organized under the Laws of the State of Delaware and SHAHEEN NATURAL RESOURCES COMPANY, INC. being organized under the Laws of the State of Illinois.

4. At all relevant times the defendants were and still are affiliated, related and/or subsidiary companies, having common directors and officers and all subject to common control.

5. On August 8, 1972 defendants, by and through NEWFOUNDLAND REFINING COMPANY, LIMITED, entered into a time charter party with plaintiff for the time charter of a newbuilding to be designated for a period of 10 years, 14 days more or less at charterer's option; that plaintiff delivered under said charter the tank vessel KYOKKO MARU, which is currently performing thereunder.

6. On August 8, 1972 defendants, by and through NEWFOUNDLAND REFINING COMPANY, LIMITED, entered into a time charter party with plaintiff for the time charter of a newbuilding to be designated for a period of 9 years, six (6) months, 14 days more or less at charterer's option; that plaintiff delivered under said charter the tank vessel ELEFTHEROUPOLIS, which is currently performing thereunder.

A            6  
Complaint

7. On August 8, 1972 defendants, by and through NEWFOUNDLAND REFINING COMPANY, LIMITED, entered into a time charter party with plaintiff for the time charter of a newbuilding to be designated for a period of 8 years, 14 days more or less at charterer's option; that plaintiff delivered under said charter the tank vessel BARBARA T. SHAHEEN which is currently performing thereunder.

8. Plaintiff has duly performed and is performing all of its obligations under the said time charters but defendants have failed to pay charter hire when due amounting to, in the aggregate, \$8,112,323.68 as of the date hereof, although due demand has been made therefor by plaintiff.

WHEREFORE, plaintiff demands judgment against defendants in the sum of \$8,112,323.68, together with the costs and disbursements of this action.

BIGHAM ENGLAR JONES & HOUSTON  
Attorneys for Plaintiff

By

Sheldon A. Vogel  
A Member of the Firm

Office and P.O. Address  
99 John Street  
New York, N.Y. 10038  
(212) 732-4646



ORDER TO SHOW CAUSE FOR AN ORDER OF ATTACHMENT WITH  
TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

THE SANKO STEAMSHIP CO., LTD.,

Plaintiff,

-against-

NEWFOUNDLAND REFINING COMPANY, LIMITED,  
NEWFOUNDLAND REFINING COMPANY LIMITED  
U.S.A., PROVINCIAL BUILDING COMPANY  
LIMITED, PROVINCIAL REFINING COMPANY  
LIMITED, PROVINCIAL HOLDING COMPANY  
LIMITED and SHAHEEN NATURAL RESOURCES  
COMPANY, INC.,

Defendants.

: ORDER TO SHOW  
CAUSE FOR AN  
: ORDER OF ATTACH-  
MENT WITH  
: TEMPORARY  
RESTRAINING  
: ORDER

76 CIV 756  
WK

-----y

Upon reading the complaint and the affidavit of SHELDON A. VOGEL, sworn to the 17th day of February 1976 herein, it appears that a cause of action for a judgment in a liquidated amount exists in favor of the plaintiff against the defendants to recover a sum of money, namely, the sum of \$8,112,323.68, together with interest and costs as damages for failure to pay charter hire in the aforesaid amount under the terms and conditions of three (3) charter parties dated August 8, 1972 for the vessels KYOKKO MARU, ELEFTHEROUPOLIS and BARBARA T. SHAHEEN as described in the complaint, and plaintiff is entitled to recover said sum over and above any and all counterclaims, and it satisfactorily appearing to the Court from said affidavit that one of the grounds for attachment, that

A 8

Order to Show Cause for an Order of Attachment with  
Temporary Restraining Order

defendants are foreign corporations, set out in CPLR §6201, and one of the grounds for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure, that the immediate and irreparable injury of a transfer of funds by defendants will violate the attachment sought by plaintiff and the reason for not providing notice to defendants is to prevent said transfer prior to a hearing on plaintiff's application for attachment, exists in favor of plaintiff against the defendants to recover the said sum of money, it is, therefore, on motion of BIGHAM ENGLAR JONES & HOUSTON, attorneys for plaintiff,

ORDERED that the defendants show cause before the Honorable Judge WHITMAN KNAPP, of the United States District Court for the Southern District of New York at the Court House thereof at Foley Square, New York, New York, on the 20 day of February, 1976, at 2:00 o'clock p.m. of that day or 9:05 as soon thereafter as counsel can be heard in room why an order should not be made herein granting the plaintiff's motion for an order of attachment;

ORDERED that pending the hearing thereof defendants are temporarily restrained from removing, releasing or secreting \$3,000,000 from each or any of their bank accounts or removing, releasing or secreting \$3,000,000 of any securities and/or credits held for the account of or in the name of the aforesaid defendants



*Order to Show Cause for an Order of Attachment with  
Temporary Restraining Order*

either individually or jointly with the Sumitomo Bank, Ltd., One World Trade Center, Suite 9551, New York, N.Y., the European-American Bank & Trust Co., 10 Hanover Square, New York, N.Y. and 90 Park Avenue, New York, N.Y. and Manufacturers Hanover Trust Company, 4 New York Plaza, New York, N.Y., or any other financial institutions of any nature whatsoever and wheresoever located within the jurisdiction of this Court said amount to be a cumulative amount of funds credits and/or securities belonging to the defendants in any of their accounts at the aforesaid banks;

ORDERED that the Sumitomo Bank, Ltd., the European-American Bank & Trust Co. offices as above named and Manufacturers Hanover Trust Company be temporarily restrained from removing or releasing up to an amount of \$3,000,000 which said banks may be holding for defendants in any manner whatsoever including, but not linked to bank accounts and/or negotiable credits or securities which said banks are holding for the defendants.

ORDERED that the within temporary restraining orders against the defendants shall expire at 4 o'clock P. m. on the 20 day of Feb 1976;

A 10

Order to Show Cause for an Order of Attachment with  
Temporary Restraining Order

AND ORDERED that the Sumitomo Bank, Ltd.,  
European-American Bank & Trust Co. offices as above named  
and Manufacturers Hanover Trust Company are to make avail-  
able to plaintiff all records indicating the transfer of  
funds into and out of the accounts of defendants with them  
from November 30, 1975 up to and including the date of  
this Order;

AND ORDERED, that security in the amount of  
\$300,000 be posted by the plaintiff prior to  
February 18, 1976, at 12 o'clock ~~in the~~ noon  
of that day;

AND IT IS FURTHER ORDERED that <sup>PERSONAL</sup> service of a  
copy of this Order and the papers annexed thereto be made  
on defendants <sup>LET THEM ATTORNEYS</sup> on or before the 18 day of February,  
1976, by 3 P.M.

Dated: New York, New York  
February 17 1976

Issued At  
4:10 P.M.

W. H. Knapp  
U. S. D. J.



Order to Show Cause for an Order of Attachment with  
Temporary Restraining Order

The last paragraph on page 3 has  
been eliminated without prejudice  
to its renewal upon the return  
date of this motion. The return  
date herein has been set without  
prejudice to an application for  
acceleration thereof by defendants.

P.W.K.  
/U.S.D.J.  
Feb. 17, 1976

AFFIDAVIT OF SHELDON A. VOGEL IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

THE SANKO STEAMSHIP CO., LTD., :

Plaintiff, :

-against- : AFFIDAVIT

NEWFOUNDLAND REFINING COMPANY, LIMITED, :

NEWFOUNDLAND REFINING COMPANY LIMITED :

U.S.A., PROVINCIAL BUILDING COMPANY :

LIMITED, PROVINCIAL REFINING COMPANY :

LIMITED, PROVINCIAL HOLDING COMPANY :

LIMITED and SHAHEEN NATURAL RESOURCES :

COMPANY, INC., :

Defendants. :

----- X

STATE OF NEW YORK )

: SS.:

COUNTY OF NEW YORK )

SHELDON A. VOGEL, being duly sworn, deposes  
and says:

1. That he is a member of the firm of  
BIGHAM ENGLAR JONES & HOUSTON, attorneys for plaintiff  
herein, and that he is fully familiar with all of the  
proceedings herein.

2. That he makes this affidavit in support  
of plaintiff's motion for an order to show cause with a  
temporary restraining order why an order of attachment  
shall not be granted herein.

3. That this action was commenced by the



filing of a complaint and the issuance of summonses by this Honorable Court on February , 1976 (a copy of which is annexed hereto as Exhibit A). Issue has not yet been joined as defendants' answering time has not expired.

4. Upon information and belief, plaintiff is a corporation organized and existing under and by virtue of the laws of the Empire of Japan. All defendants, except NEWFOUNDLAND REFINING COMPANY LIMITED U.S.A. and SHAHEEN NATURAL RESOURCES COMPANY, INC., are corporations organized and existing under and by virtue of the Laws of the Province of Newfoundland, Canada. NEWFOUNDLAND REFINING COMPANY LIMITED U.S.A. is a corporation organized and existing under and by virtue of the Laws of the State of Delaware, with its principal offices at 90 Park Avenue, New York, N.Y., and SHAHEEN NATURAL RESOURCES COMPANY, INC. is a corporation organized and existing under and by virtue of the Laws of the State of Illinois.

5. Upon information and belief, at all relevant times defendants were affiliated, related and/or subsidiary companies having common directors and officers and all subject to common control.

6. As set forth in plaintiff's complaint, plaintiff is asserting a cause of action against the

defendants for failure to pay charter hire in the aggregate amount of \$8,112,323.63 due plaintiff under the terms and conditions of three (3) charter parties dated August 8, 1972 for the vessels S.S. KYOKKO MARU, S.S. ELEFTHEROUPOLIS and S.S. BARBARA T. SHAHEEN entered into between plaintiff and defendants, through and by NEWFOUNDLAND REFINING COMPANY LIMITED.

7. Upon information and belief, the Sumitomo Bank, Ltd., One World Trade Center, Suite 9651, New York, N.Y., the European-American Bank & Trust Co., 10 Hanover Square, New York, N.Y. and 90 Park Avenue, New York, N.Y. and Manufacturers Hanover Trust Company, 4 New York Plaza, New York, N.Y., have in their possession or under their control moneys and/or credits and/or securities belonging to defendants.

8. Defendants as aforesaid are foreign corporations, and plaintiff seeks an order of attachment pursuant to Rule 64 of the Federal Rules of Civil Procedure, which provides as follows:

"Seizure of personal property. At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the State in which the District Court is held, existing at the time the remedy is sought, subject to the



following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted or, if removed from a State Court, shall be prosecuted after removal, pursuant to these Rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by State procedure a remedy is ancillary to an action or must be obtained by independent action."

9. Section 6201 (1) of the Civil Practice Law and Rules of the State of New York provides as follows:

"Grounds for Attachment. An order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when: (1) the defendant is a foreign corporation or not a resident or domiciliary of the State; or \* \* \*"

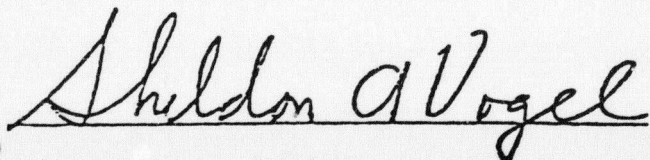
10. Plaintiff's cause of action is for a money judgment in a liquidated amount and defendants are not believed to have a counterclaim arising out of the aforementioned contracts. In fact, defendants have never challenged that the aforesaid amount is due and owing plaintiff but have merely stated their inability to pay the same.

11. It is necessary to proceed against the defendants in this manner and to seek a temporary restraining order against the aforesaid banks listed in

Paragraph 7 pending a hearing as requested in the attached order because of the decision in this Court of Bert Randolph Sugar v. Curtis Circulation Company, 383 F. Supp. 643 (S.D.N.Y. 1974), which has held that an attachment pursuant to §6201(1) of the CPLR may be invalid unless the proceeding is made on notice. A temporary restraining order is necessary to prevent the transfer of funds during the interval between service of this order and the hearing requested. If the temporary restraining order sought here is not granted, plaintiff will suffer immediate and irreparable injury. To prevent transfer of funds it is necessary that this order be granted without notice, and, therefore, no efforts to notify defendants have been made by deponent.

12. No previous application for the same or similar relief has been made before this or any other Court.

WHEREFORE, your deponent respectfully requests that the within order to show cause why an order of attachment of defendants' funds within this jurisdiction should not be granted and that this Court shall temporarily restrain the defendants from transferring funds pending the hearing of this application.



(Sworn to February 17, 1976)



EXHIBIT A--COMPLAINT ANNEXED TO AFFIDAVIT OF SHELDON A. VOGEL

Identical to Complaint printed herein at pages A4 to  
A6.

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EXHIBIT A--SUMMONS ANNEXED TO AFFIDAVIT OF SHELDON A. VOGEL

## United States District Court

FOR THE  
SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. \_\_\_\_\_

THE SANKO STEAMSHIP CO., LTD.,

Plaintiff

v.

NEWFOUNDLAND REFINING COMPANY LIMITED,  
NEWFOUNDLAND REFINING COMPANY LIMITED, U.S.A.,  
PROVINCIAL BUILDING COMPANY LIMITED,  
PROVINCIAL REFINING COMPANY LIMITED,  
PROVINCIAL HOLDING COMPANY LIMITED and  
SHAHEEN NATURAL RESOURCES COMPANY, INC.,

Defendant

76 Civ 756

WK

SUMMONS

To the above named Defendant S

You are hereby summoned and required to serve upon

BIGHAM ENGLAR JONES &amp; HOUSTON

plaintiff's attorney, whose address is 99 John Street, New York, N.Y. 10038

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Raymond F. Bechler  
Clerk of Court.Ea Becker  
Deputy Clerk.

Date:

2-17-76

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.



AFFIDAVIT OF ROY M. FURMARK IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

<hr/>		X
THE SANKO STEAMSHIP CO., LTD.,	:	
Plaintiff,	:	
-against-	:	
NEWFOUNDLAND REFINING COMPANY, LIMITED,	:	AFFIDAVIT
NEWFOUNDLAND REFINING COMPANY LIMITED	:	Index No. 76 CIV 756
U.S.A., PROVINCIAL BUILDING COMPANY	:	WK
LIMITED, PROVINCIAL REFINING COMPANY	:	
LIMITED, PROVINCIAL HOLDING COMPANY	:	
LIMITED and SHAHEEN NATURAL RESOURCES	:	
COMPANY, INC.,	:	
Defendants.	:	
<hr/>		X
STATE OF NEW YORK	) ss.:	
COUNTY OF NEW YORK	)	

Roy M. Furmark being duly sworn, deposes and says:

1. This affidavit is filed in opposition to the plaintiffs Motion herein for an Order of Attachment and in support of vacatur of this Court's Temporary Restraining Order contained in the Order to Show Cause dated February 17, 1976.

2. I am, and have been at all relevant periods referred to in the complaint herein, Executive Vice President of defendant Newfoundland Refining Company Limited, a Newfoundland corporation (herein "NRC"), and I know of the facts stated herein.

3. In such capacity I executed the Charter Parties dated August 8, 1972, for the vessels KYOKKO MARU, ELEFTHEROUPOLIS and BARBARA T. SHAHEEN referred to in the Complaint attached to the affidavit of Seldon A. Vogel (herein the "Vogel affidavit").

4. Attached hereto as Exhibits 1, 2 and 3 are Charter



Parties for, respectively, the KYOKKO MARU, ELEFTHEROUPOLIS and BARBARA T. SHAHEEN, as described in the complaint and the Vogel affidavit, and all are solely between plaintiff and defendant NRC. The said Charter Parties are all dated August 8, 1972, and all contain the following identical provisions:

"40. (a) This charter shall be construed and the relations between the parties determined in accordance with the law of England.

"(b) Any dispute arising under this charter shall be decided by the English Courts to whose jurisdiction the parties agree whatever their domicile may be:

"Provided that either party may elect to have the dispute referred to the arbitration of a single arbitrator in London in accordance with the provisions of the Arbitration Act, 1950, or any statutory modification or re-enactment thereof for the time being in force. Such election shall be made by written notice by one party to the other not later than 21 days after receipt of a notice given by one party to the other of a dispute having arisen under this charter".

5. Defendant NRC disputes the amount due plaintiff under the three charters and contends that the amount due can only be determined by an accounting between it and plaintiffs.

6. Defendant further contends that under English law it is entitled to an equitable readjustment of the charter rate for each of the three vessels; that other charterers of vessels to defendant NRC did recognize such right of defendant NRC and did consent to an adjustment of the charter rates; and defendant did request that plaintiff enter into



good faith negotiations for such readjusted charter rates to which request plaintiff failed to respond.

7. Defendant NRC is entitled to a trial of all of these issues in an English Court of law or arbitration and plaintiff is attempting to deprive defendant NRC of that right by bringing this action in the Federal Court in New York, contrary to its contractual agreement that all disputes would be decided by the English Courts or by arbitration in London. I am told the United States Supreme Court has decided that such "forum selection" contract provisions are binding on the parties. The Bremen, et al vs. Zapata Offshore Co., 407 U.S. 1 (1972) and National Rental vs. Szukhent, 375 U.S. 311 (1964). In National Rental and in Bremen the Court held:

"[I]t is settled...that parties to a contract may agree in advance to submit to the jurisdiction of a given court, to permit notice to be served by the opposing party, or even to waive notice altogether...." (407 U.S. 1, 11; 375 U.S. 311, 315-16)

Bremen further held:

"Plainly, the courts of England meet the standards of neutrality and long experience in admiralty litigation. The choice of that forum was made in an arm's-length negotiation by experienced and sophisticated businessmen, and absent some compelling and countervailing reason it should be honored by the parties and enforced by the courts." (407 U.S. 1, 12)

8. Plaintiff has also named as a defendant herein Newfoundland Refining Company Limited U.S.A., incorporated under the laws of Delaware (herein "NRC-USA"); NRC-USA was, at the time the Charter Parties were executed in 1972, a



dormant "shell" corporation the name of which was SNR Dover, Inc., and it had no connection whatsoever with defendant NRC. In 1974, the name of SNR Dover, Inc. was changed to its present name and at that time it became active as a trading company of light petroleum distillate products, primarily jet fuel and #2 heating oils. NRC-USA is neither a subsidiary of NRC nor a parent of NRC; it is owned by the same parent company as NRC. NRC-USA purchases light petroleum products from NRC and from other, non-affiliated sellers and in turn sells such products to customers in the United States; NRC-USA primarily sells jet fuel to air lines at J.F. Kennedy Airport in New York City; it must arrange for the supply, transportation and delivery of such products and must be responsible to the buyers for meeting the specifications of such products (primarily jet fuel). NRC-USA has never had any dealings with plaintiffs whatsoever, has never transported any product or otherwise used the three vessels referred to in paragraph 2 herein, and is not in any way indebted to plaintiff.

9. Plaintiff has also named as defendants herein Provincial Building Company Limited (herein "PBC") and Provincial Refining Company Limited (herein "PRC"). In 1972, when the Charter Parties here involved were executed, both of these companies were Crown Corporations, owned by the Government of Newfoundland. Only on October 9, 1973, did those companies become subsidiaries of NRC. PRC owns a



refinery at Come-By-Chance, Newfoundland, which refinery was constructed by PBC. The business of the refinery is operated by NRC. Neither PBC or PRC has ever had any dealings whatsoever with plaintiff, nor is either of them indebted to plaintiff.

10. Plaintiff has also named as a defendant herein Shaheen Natural Resources Company, Inc., an Illinois corporation (herein "SNR") which, through two tiers of subsidiary companies, owns NRC (that is, SNR is the "great grandparent" of NRC). Eight years ago, on March 20, 1968, SNR, NRC, plaintiff and another Japanese company, Ataka & Co., Ltd. (herein "Ataka") entered into an agreement (Exhibit 4 hereto) for the "construction, bareboat chartering, use under a contract of affreightment and financing of a combination carrier of 135,000-160,000 DWT"; under said Agreement NRC was to be the charterer of the vessel. The only obligation of SNR under the said agreement was Article VI, which required SNR to deposit under an escrow agreement, as security for performance by NRC of its obligations under the contract of affreightment certain securities "which shall be subject to approval by Charterer." SNR was not a guarantor of the performance of NRC under the contract of affreightment. Later, by agreement dated August 8, 197<sup>2</sup> (Exhibit 5 hereto), the date the instant Charter Parties were executed, plaintiff agreed to cancel the contract of affreightment (paragraph 1) referred to in the March 20, 1968 agreement. The plaintiff gave up its demand for the escrow fund and should not now be heard to

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AMF



*Affidavit of Roy M. Furmark*

make any claim against SNR; SNR is not indebted in any way to plaintiff.

11. Plaintiff has also named as a defendant herein Provincial Holding Company Limited (herein "PHC"), incorporated under the laws of Newfoundland; PHC is purely a holding company, owning the stock of PRC, which, as pointed out above, has never had any business dealings with plaintiff. PHC is not actively engaged in any business and has never had any business dealings whatsoever with plaintiff nor is it in any way indebted to plaintiff.

12. Assuming, arguendo, that plaintiff may be able to create some sort of liability of the defendants other than NRC for the monies owed on the Charter Parties, such claims would merely be claims for payment of money, since only NCR is a party to the Charter Parties. In such event, I am advised that this Court would be deprived of jurisdiction, as such money claims are by no stretch of the law claims in admiralty (1 Benedict on Admiralty, §184). Since plaintiff has a principal office in New York and defendants SNR and ~~NCR~~<sup>NCR</sup> also have principal offices in New York there does not appear to be the requisite diversity of citizenship to support this Court's jurisdiction.

WHEREFORE defendants respectfully request that this Court (1) forthwith dissolve the Temporary Restraining Order contained in the Order to Show Cause dated February 17th, 1976; (2) and deny in all respects the plaintiff's motion

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Affidavit of Roy M. Furmark

for an order of attachment; and (3) award defendants such damages and costs as may properly be chargeable against plaintiff by reason of this action.

151 ROY M. FURMARK  
ROY M. FURMARK

Sworn to before me this  
15th day of February 1976.

*MAUREEN M. PARTLAND*

**MAUREEN M. PARTLAND**  
**NOTARY PUBLIC, State of New York**  
**No. 41-263880**  
**Qualified in Queens County**  
**Certificate filed in New York County**  
**Commission Expires March 30, 1977**



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EXHIBIT 1--CHARTER PARTY (KYOKKO MARU) ANNEXED  
TO AFFIDAVIT OF ROY M. FURMARK

Kyokko Maru

Code word for this Charter Party

"SHELLTIME 3"

Issued June 1963

Time Charter Party

LONDON

NYK

New York, August 8, 1972

It is this day agreed between The Sanko Steamship Company Limited

of Tokyo, Japan

(hereinafter referred to as "Owners"), being Owners of the

of newbuilding steam

good tank vessel called Mitsubishi Heavy Industries Co., Ltd.

Hull No. 1701 to be named with Japanese, Liberian, Panamanian or Singapore

(hereinafter referred to as "the vessel") described as per clause 24 hereof and

Newfoundland Refining

Company Ltd. St. John's, Newfoundland

of (hereinafter referred to as "Charterers").

Description  
of Vessel

1. Owners guarantee that at the date of delivery of the vessel under this charter

(a) she shall be classed Nippon Kaiji Kyokai or equivalent

(b) she shall be in every way fitted for burning marine diesel oil or fuel oil with a maximum viscosity of 3500 seconds Redwood 1 at 100 degrees F. in main motors and any commercial grade of fuel oil under boilers; and

10,280 Kcal/K.G. (H.C.V.)

(c) ~~she shall be ready to receive cargo at all times of loading and unloading and shall be capable of carrying cargo in bulk~~ vessel uncoiledCondition  
of Vessel

2. Owners shall, before and at the date of delivery of the vessel under this charter, exercise due diligence to make the vessel

(a) in every way fit to carry crude petroleum and/or its products; and

(b) tight, staunch, strong, in good order and condition, in every way fit for the service, with her machinery, boilers and hull in such a state as to obtain the most economical working and with a full and efficient complement of master, officers and crew for a vessel of her tonnage.

Owners undertake that throughout the period of service under this charter they will, whenever the passage of time, wear and tear or any event (whether coming within clause 28 hereof or not) requires steps to be taken to maintain the vessel as stipulated in clause 1 hereof and in this clause or to restore the vessel to such condition, exercise due diligence to maintain or restore the vessel as aforesaid, and that they will comply with the regulations in force so as to enable the vessel to pass through the Suez and Panama Canals by day and night without delay.

Period and  
Trading Limits

3. Owners agree to let and Charterers agree to hire the vessel for a period of 10 (Ten) years, 14 (Fourteen) days more or less at Charterers' option.

excluding communist and communist controlled countries, Cuba and Israel ports, except with Owners' prior consent which not to be unreasonably withheld.

commencing from the time and date of delivery of the vessel, for the purpose of carrying all lawful merchandise including in particular crude oil and/or its dirty petroleum products.

in any part of the world, as Charterers shall direct, subject to the limits of the current British Institute Warranties and any subsequent amendments thereof, it being understood that Charterers shall not send the vessel to ice-bound waters without Owners' consent but such consent shall not be unreasonably withheld.

Charterers shall exercise due diligence to ensure that the vessel is only employed between and at safe ports, places, berths, docks, anchorages and submarine lines where she can always lie safely afloat, but notwithstanding anything contained in this or any other clause of this charter, Charterers shall not be deemed to warrant the safety of any port, place, berth, dock, anchorage or submarine line and shall be under no liability in respect thereof except for loss or damage caused by their failure to exercise due diligence as aforesaid. Subject as above, the vessel shall be loaded and discharged in any dock or at any wharf or place or anchorage or submarine line or alongside lighters or other vessels as Charterers may direct.

a port in Japan or at a port or point not further in distance from the Persian Gulf than the port of delivery

The vessel shall be delivered by Owners at a port in Japan, or at a point not further in distance from Persian Gulf than Japan

at Owners' option and redelivered to Owners at / Owners shall notify Charterers of the

at Charterers' option.

estimated time of delivery in written letter, telex or cable on 30 (Thirty) days at least prior to delivery and



# A 27

## Exhibit 1

2

Laydays/ Canceling	4. The vessel shall not be delivered to Charterers before <u>August 15, 1973</u>	40
	and Charterers shall have the option of canceling this charter if the vessel is not ready and at their disposal on or before <u>October 15, 1973</u> .	41 42
Owners to Provide	5. Owners undertake to provide and pay for all provisions, wages, and shipping and discharging fees and all other expenses of the master, officers and crew, except as provided in clauses 34 and 35 hereof, to pay for all insurance on the vessel, for all deck, cabin and engine room stores, and water, except water for the boilers which (unless the vessel is oil-burner) is to be supplied and paid for by Charterers, and for all fumigation expenses and deratization examination certificates. Owners' obligations under this clause extend to cover all liability for customs or import duties arising at any time during the performance of this charter in relation to the personal effects of the master, officers and crew, and in relation to the stores, provisions and other matters aforesaid which Owners are to provide and/or pay for and Owners shall refund to Charterers any sums they or their agents may have paid or been compelled to pay in respect of such liability. Any amounts allowable in general average for wages and provisions and stores shall be credited to Charterers insofar as such amounts are in respect of a period when the vessel is on hire.	43 44 45 46 47 48 49 50 51 52 53
Charterers to Provide	6. Charterers shall provide and pay for all fuel (except galley fuel), towage and pilotage and shall pay agency fees, port charges, commissions, expenses of loading and unloading cargoes, canal dues and all charges other than those payable by Owners in accordance with the preceding clause hereof, provided that all charges for the said items shall be paid by Owners when incurred for Owners' purposes, whether the vessel is on hire or off-hire. The foregoing provision as to fuel shall not apply to any fuel used in connection with a general average sacrifice or expenditure or with the preparation for and the drydocking or repair of the vessel which shall in any event be paid for by Owners.	54 55 56 57 58 59 60
Rate of Hire	7. Subject as herein provided Charterers shall pay for the use and hire of the vessel at the rate of <u>U.S.\$2.55 (Two United States Dollars and Fifty-Three Cents)</u> per ton of <u>gross tonnage</u> on the vessel's total deadweight on <u>for 2,240 lbs.</u> <u>for delivery</u> summer freeboard, as assigned at the date thereof, per calendar month, commencing at and from the time and date of her delivery as aforesaid, and pro rata for any part of a month, and continuing until the date of her redelivery to Owners.	61 62 63 64 65
Payment of Hire	8. Payment of the said hire shall be made in U.S. dollars, monthly in advance less any amounts disbursed on Owners' behalf and less any hire paid or expenses incurred by Charterers as may reasonably be estimated by them to relate to off-hire periods, and less any amounts due or estimated to become due to Charterers under the terms of clause 24 hereof, any adjustment to be made at the due date for the next monthly payment after the facts have been ascertained. In default of such payment Owners may withdraw the vessel from the service of Charterers, without prejudice to any claim Owners may otherwise have on Charterers under this charter.	66 67 68 69 70 71 72
Space Available to Charterers	9. The whole reach, barge and docks of the vessel and its passenger accommodation (which shall be deemed to include Owners' suite) if any, shall be at Charterers' disposal, reserving only proper and sufficient space for the vessel's master, officers, crew, tackle, apparel, furniture, provisions and stores, provided that the weight of stores on board shall not, unless specially agreed, exceed 150 tons in any one hold during the period of the charter. The vessel shall load and discharge cargo as rapidly as possible by bulk as well as by bag when required by Charterers or their agents to do so. Charterers may consistently with the safety of the vessel remove any stowage, and bundles, which shall, if required, be replaced by them before redelivery at their own expense and to the satisfaction of Owners' surveyor. <u>U.S. Dollars \$700 lumpsum monthly</u>	73 74 75 76 77 78 79 80
Duties of Master	10. The master shall prosecute his voyages with the utmost despatch and shall render all reasonable assistance with the vessel's officers and crew and equipment to overcome any of the master, officers and crew in accordance with ship's articles being at Charterers' expense when incurred as a result of complying with the request of Charterers or their agents.	81 82 83 84
Instructions and Logs	11. The master shall be furnished by Charterers from time to time with all requisite instructions and sailing directions, and shall keep a full and correct log of the voyage or voyages, which shall be open to inspection by Charterers or their agents as required. The master shall furnish Charterers or their agents when required to do so with a true copy of such log and with properly completed loading and discharging port sheets and voyage reports for each voyage and other returns as Charterers may require. Charterers shall be entitled to take copies at Owners' expense of any of such documents as are not provided by the master.	85 86 87 88 89 90
Conduct of Vessel's Personnel	12. If Charterers shall complain of the conduct of the master or any of the officers, Owners and Charterers jointly shall immediately investigate the complaint, and if the complaint prove to be well founded, Owners shall, without delay, make a change in the appointments.	91 92 93
Bills of Lading	13. The master (although appointed by Owners) shall be under the orders and direction of Charterers as regards employment of the vessel, agency or other arrangements. Bills of lading are to be signed at any rate of freight Charterers or their agents may direct, without prejudice to this charter, the master attending as necessary at the offices of Charterers or their agents to do so. Charterers hereby indemnify Owners against all consequences or liabilities that may arise from the master, Charterers or their agents signing bills of lading or other documents, or from the master or his crew complying with Charterers' or their agents' orders, as well as from any irregularities in papers supplied by Charterers or their agents. The said indemnity shall not extend to any consequences or liabilities or apply to any loss or damage arising from orders to proceed to, enter, remain in or at, departure from or stay therein in or at any port, place, berth, dock, anchorage, or submarine line, other than consequences or liabilities or loss or damage resulting from or caused by failure to exercise due diligence as required by clause 3 hereof.	94 95 96 97 98 99 100 101 102 103 104
Stowage	Stowage when required shall be employed and paid by Charterers, but this shall not relieve Owners from responsibility as to time for proper stowage, which must be controlled by the master, who shall keep a strict account of all cargo loaded and discharged. Owners hereby indemnify Charterers, their servants and agents, against all losses, claims, responsibilities and liabilities arising in any way whatsoever from the employment of pilots, tug boats or stevedores who although employed by Charterers shall be deemed to be the servants and in the service of Owners and under their instructions.	105 106 107 108 109 110



Passengers	15. Charterers may send passengers in the vessel's available accommodation upon any voyage made under this charter. Owners finding provisions and all requisites as supplied to officers, except liquors, Charterers paying at the rate of <u>US\$4.00</u> per day for each passenger while on board the vessel.	116 117 118
Sub-let	16. Charterers may sub-let the vessel, but shall always remain responsible to Owners for the due fulfillment of this charter.	119 120
Infected Area and Infraction of Local Law	17. Owners shall be liable for any delay in quarantine arising from the master, officers or crew having communication with the shore at any infected area without the written consent or instructions of Charterers or their agents, also for any loss of time through detention by customs or other authorities caused by smuggling or other infraction of <del>law</del> on the part of the master, officers or crew.	121 122 123 124
Final Voyage	18. Should the vessel be on her voyage towards the port of redelivery at the time a payment of hire is due, payment of hire shall be made for such length of time as Owners and Charterers may agree upon as being the estimated time necessary to complete the voyage, less any disbursements made or expected to be made or expenses incurred or expected to be incurred by Charterers for Owners' account and less the estimated value of bunker fuel remaining at the termination of the voyage, and when the vessel is redelivered any overpayment shall be refunded by Owners or underpayment paid by Charterers. Notwithstanding the provisions of clause 3 hereof, should the vessel be upon a voyage at the expiry of the period of this charter, Charterers shall have the use of the vessel at the same rate and conditions for such extended time as may be necessary for the completion of the round voyage on which she is engaged and her return to a port of redelivery as provided by this charter.	125 126 127 128 129 130 131 132 133
Loss of Vessel	19. Should the vessel be lost, hire shall cease at noon on the day of her loss and, should the vessel be missing, hire shall cease at noon on the day on which she was last heard of, and any hire paid in advance and not earned shall be returned to Charterers. <u>in a port which to be mutually agreed between Owners and Charterers.</u>	131 132 133 134
Laying-up	20. Charterers shall have the option of laying up the vessel in which case the hire provided for under this charter shall be reduced by the amount by which Owners can reasonably reduce the expenditure otherwise falling upon them under this charter.	137 138 139
Off-hire	21. In the event of loss of time (whether arising from interruption in the performance of the vessel's service or from reduction in the speed of the performance thereof or in any other manner) <ul style="list-style-type: none"> <li>(a) continuing for more than 24 hours, due to deficiency of personnel or stores, repairs, breakdown (whether partial or otherwise) of machinery or boilers, collision or stranding or accident or damage to the vessel or any other cause preventing the efficient working of the vessel; or</li> <li>(b) whether or not continuing for 24 hours,               <ul style="list-style-type: none"> <li>(i) due to strikes, refusal to sail, breach of orders or neglect of duty on the part of the master, officers or crew; or</li> <li>(ii) for the purpose of obtaining medical advice or treatment for or landing any sick or injured person (other than a passenger carried under clause 15 hereof) or for the purpose of landing the body of any person (other than such a passenger);</li> </ul> </li> </ul> hire shall cease to be due or payable from the commencement of such loss of time until the vessel is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced. <p>Any such loss of time which arises wholly or partly from a reduction in the vessel's guaranteed average speed provided in clause 22 hereof shall be taken to be the difference between the time the vessel would require to perform the relevant service at the said speed and the time actually taken to perform the same and such loss of time shall be added to any loss of time arising from interruption in the performance of the vessel's service in order to arrive at the said period of 24 hours.</p> <p>Further and without prejudice to the foregoing, in the event of the vessel deviating (which expression includes putting back, or putting into any port other than that to which she is bound under the instructions of Charterers) for any cause or for any purpose previously mentioned in this clause, no hire shall in any case be payable as from the commencement of such deviation until the time when the vessel is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which the deviation commenced.</p> <p>In the event of the vessel, for any cause or for any purpose previously mentioned in this clause, putting into any port other than the port to which she is bound under the instructions of Charterers, the port charges, pilotage and other expenses at such port shall be borne by Owners. Should the vessel be driven into port or any anchorage by stress of weather hire shall continue to be due and payable during any loss of time caused thereby.</p> <p>In the event of detention of the vessel by authorities at home or abroad in consequence of legal action against Owners (unless brought about by the act or neglect of Charterers), whereby the vessel is rendered unavailable for Charterers' service, the vessel shall be off-hire until the service can again be resumed.</p> <p>If the nation to which the vessel belongs becomes engaged in hostilities, hire and all other charges shall cease during the continuance of such hostilities if Charterers in consequence of such hostilities find it impossible to employ the vessel and in that event Owners shall have the right to employ the vessel on their own account.</p> <p>All drydock charges shall be at Owners' expense. Time lost by the vessel gasfreeing for repairs and in and waiting her turn to enter drydock shall, irrespective of duration, count as off-hire.</p> <p>Any loss of time during which the vessel is off-hire as provided in this and the succeeding clause shall count as part of the charter period.</p> <p><u>TWELVE TO TWENTY-FOUR</u></p> <p>22. Owners undertake that within months after the vessel was last drydocked and at the expiry thereafter of each twelve months of continuous use under the charter they will put the vessel in drydock and clean and paint her bottom at their expense as soon thereafter as Charterers place the vessel at Owners' disposal, clear of cargo, at a port having suitable accommodation for the purpose.</p> <p>Notwithstanding the provision in the preceding clause as to time lost by the vessel gasfreeing, time lost in</p>	140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182
Periodical Drydocking	<u>TWELVE TO TWENTY-FOUR</u>	176 177



	Charterers shall deliver, on or before the date of delivery of the vessel under this charter, furnish charterers with a similar description, which description to be based on final particulars the vessel	185
	The vessel shall be off-hire from the time of arrival at the drydocking port but provided due diligence is exercised as above and any time lost thereafter in gasfreering for the purpose aforesaid shall be excluded from the off-hire period and different as on hire. The vessel shall remain off-hire until it is again in every way ready to resume Charterers' service at the position at which the off-hire period commenced, or at an equivalent position. The expense of gasfreering, which shall include the cost of bunkers used, shall be for Owners' account.	186 187 188 189
	If Owners require the vessel to proceed to any special port for periodical docking purposes, no hire shall be payable for time lost in proceeding to, whilst at and after leaving such special port until reaching a position equivalent to that at which the off-hire period commenced, nor for the time lost in making tanks free of gas for such docking; all fuel consumed and all other expenses incurred in the course thereof shall be paid for by Owners. Charterers crediting Owners with any benefit they may gain in purchasing fuel at the special port aforesaid. All drydocking shall be at Owners' expense. Time spent by the vessel in and waiting her turn to enter drydock shall, irrespective of duration, count as off-hire.	191 192 193 194 195 196 197
Boiler Cleaning, etc.	21. Owners undertake that all cleaning of boilers and/or opening up of pistons and/or overhauling of engines shall be carried out so far as is practicable during periods when the vessel is off-hire, and in any event so as to avoid or minimise delay to the vessel. If and in so far as it is not practicable to carry out the said work while the vessel is off-hire or concurrently with other work, and provided that Owners obtain Charterers' prior approval, a maximum of 72 hours, which shall be cumulative, shall be allowed on hire and when necessary in any year, or pro rata for part of a year from the commencement of the Charter period for carrying out the said work.	198 199 200 201 202 203
	Nothing in this clause shall affect any other term of this charter which provides that the vessel shall be off-hire, which description to be based on preliminary particulars of the vessel.	204
Detailed Description and Performance	22. Charterers warrant that at the time of delivery under this charter the vessel shall be of the description set out in Form B, dated Aug. 8, 1927, attached hereto and signed by them and undertake to use their best endeavours to maintain the vessel during the period of her service hereunder. Further but otherwise without prejudice to the generality of this clause Owners guarantee that the average speed of the vessel will be not less than 16 knots with a maximum bunker consumption of 160 tons fuel oil per day for all purposes excluding cargo heating and tank cleaning. In moderate weather with a maximum viscosity of 3,500 seconds Redwood No. 1 at 100°F, 10,280 kcal/ke.	205 206 207 208 209 210
	based on 50% laden/50% in ballast	211 212 213
	If during any year from the commencement of the charter period Owners fail to comply with their obligations under this clause hire shall be reduced to the extent necessary to indemnify Charterers for such failure. Where the failure to comply with the said obligations affects the time taken by the vessel to perform any of her services hire shall be reduced in an amount proportionate to the loss of time involved. Reduction of hire under the foregoing provisions shall be without prejudice to any other remedy available to Charterers.	214 215 216 217 218
	Claims in respect of reduction of hire arising under this clause during the final year or part year of the charter period as specified in clause 3 hereof and any extension thereof under this charter shall in the first instance be settled in accordance with Charterers' estimate made two months before the end of the charter period as so specified. Any necessary adjustment after the end of the charter shall be made by payment by Owners to Charterers or Charterers to Owners as the case may require.	219 220 221 222 223
	In the event of any conflict between the particulars set out in the aforesaid Form B and any other provision (including this clause) of this charter such other provision shall prevail.	224 225
Tanks, etc.	23. Owners guarantee that the tanks, valves and pipelines are oil-tight at the commencement of this charter, and Owners bind themselves to take every possible precaution to maintain the tanks, valves and pipelines in this condition during the charter period.	226 227 228
Salvage	24. All salvage and all proceeds from derelicts shall be divided equally between Owners and Charterers after deducting the master's, officers' and crew's share, hire of vessel for time lost and cost of fuel consumed and all other expenses incurred. Subject as aforesaid, and subject to the provisions of clause 21 hereof, all loss of time and all expenses (excluding any damage to or loss of the vessel) incurred in saving or attempting to save life and in unsuccessful attempts at salvage shall be borne equally by Owners and Charterers; provided that Charterers shall not be liable to contribute towards any salvage payable by Owners arising in any way out of services rendered under this clause.	229 230 231 232 233 234 235
Lien	27. Owners shall have a lien upon all cargoes and all freights for any amounts due under this charter; and Charterers shall have a lien on the vessel for all moneys paid in advance and not earned, and for all claims for damages arising from any breach by Owners of this charter.	236 237 238
Exceptions	28. Save that clauses 1, 2 and 24 hereof shall be unaffected hereby, the vessel, her master and Owners shall not, unless otherwise in this charter expressly provided, be responsible for any loss or damage arising or resulting from any act, neglect or default of the master, pilots, mariners or other servants of Owners in the navigation or management of the vessel; fire, unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the sea; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery. And neither the vessel, her master or Owners, nor Charterers shall, unless otherwise in this charter expressly provided, be responsible for any loss or damage or delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantining restrictions, strikes, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people. The vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress and to deviate for the purpose of saving life or property. This clause is not to be construed as in any way affecting the provisions for cessation of hire as provided in this charter.	239 240 241 242 243 244 245 246 247 248 249 250
Injurious Cargoes	29. No acids, explosives or cargoes injurious to the vessel shall be shipped; nor shall any voyage be undertaken, nor goods or cargoes be loaded, that would involve risk of seizure, capture, or penalty imposed by British or foreign rulers or governments, and without prejudice to the foregoing any damage to the tanks caused by the shipment of any such cargo or aforesaid shall be at Charterers' risk and expense, and the time taken to repair such damage shall be for Charterers' account.	251 252 253 254 255
		256



## OF THE COUNTRY OF THE FLAG OF THE VESSEL

Disbursements	31. Should the master require advances of ordinary disbursement of any port, Charterers or their agents shall make such advances to him, in consideration of which Owners shall pay a commission at 2 1/2 per cent, and all such advances shall be deducted from hire.	260 261 262
Requisition	32. Should the vessel be requisitioned by the Government during the period of this charter, the vessel shall be deemed to be off-hire during the period of such requisition, and any hire paid by the said Government in respect of such requisition period shall be for Owners' account. The period during which the vessel is on requisition to the said Government shall count as part of the period provided for in clause 3 of this charter.	263 264 265 266 267
Outbreak of War	33. If war or hostilities break out between any two or more of the following countries: United Kingdom, United States of America, Union of Soviet Socialist Republics, Peoples Republic of China, Canada, Japan, Charterers shall have the right of cancelling the charter upon 60 days prior notice of the Cancellations due to commencement of hostilities.	268 269 270 271
Additional War Expenses	34. Any extra expenses which may be incurred by Owners if the vessel has to trade in areas where there is war (de facto or de jure) shall be borne by Charterers, provided that before such expenses are incurred Charterers are given an opportunity to signify their approval.	272 273 274
War Insurance	35. War and/or mine risk insurance, if any, shall be for Owners' account, but notwithstanding the provisions of clause 5 hereof, war risk insurance on hull and machinery on a mutually agreed value in excess of the rate ruling at the date hereof shall be for Charterers' account. Any increase in War bonus to the United States of America shall be for Charterers' account.	275 276 277
Officer and Crew over and above that in effect on the date hereof shall be for Charterers' account.	36. (1) The master shall not be required or bound to sign bills of lading for any blocked port or for any port which the master or Owners in his or their discretion consider dangerous or impossible to enter or reach.	278 279 280
	(2) (A) If any port of loading or of discharge named in this charter or to which the vessel may properly be ordered pursuant to the terms of the bills of lading be blocked, or	281 282
	(B) if owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions, or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the master or Owners in his or their discretion dangerous or impossible for the vessel to reach any such port of loading or of discharge,	283 284 285 286 287
	Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other port of loading or of discharge within the range of loading or discharge ports respectively established under the provisions of the charter (provided such other port is not blocked or that entry thereto or loading or discharge of cargo thereat is not in the master's or Owners' discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from Charterers within 48 hours after they or their agents have received from Owners a request for the nomination of a substitute port, Owners shall then be at liberty to discharge the cargo at any port which they or the master may in their or his discretion decide on (whether within the range of discharge ports established under the provisions of the charter or not) and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharge ports established under the provisions of the charter, the charter shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally contemplated. However, if the vessel discharges the cargo at a port outside the range of discharge ports established under the provisions of the charter, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and/or discharging the cargo thereat shall be paid by Charterers or cargo owners. In this latter event Owners shall have a lien on the cargo for all such extra expenses.	288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304
	(3) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, supplies, destinations, zones, waters, delivery or in any other wise whatsoever given by the government of the nation under whose flag the vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations anything is done or is not done, such shall not be deemed a deviation.	305 306 307 308 309 310 311 312
	If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the bills of lading, the vessel may proceed to any port of discharge which the master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and Owners shall be entitled to freight as if discharge had been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the bills of lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by Charterers and/or cargo owners and Owners shall have a lien on the cargo for freight and all such expenses.	313 314 315 316 317 318 319 320 321
	Charterers shall procure that all bills of lading issued under this charter shall contain the foregoing clause so far as applicable to bills of lading.	322 323
Both to Blame Collision Clause	37. If the liability for any collision in which the vessel is involved while performing this charter falls to be determined in accordance with the laws of the United States of America, the following provision shall apply: "If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss of liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier."	324 325 326 327 328 329 330 331 332



A 31  
Exhibit 1

6

	Charterers shall procure that all bills of lading issued under this charter shall contain a provision in the foregoing terms, to be applicable where the liability for any collision in which the vessel is involved falls to be determined in accordance with the law of the United States of America.	336 337 338
New Jason Clause	38. General average shall be payable according to the York/Antwerp Rules, 1950, and shall be adjusted in London but should adjustment be made in accordance with the law and practice of the United States of America, the following provision shall apply:  "In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.  If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."	339 340 341 342 343 344 345 346 347
	Charterers shall procure that all bills of lading issued under this charter shall contain a provision in the foregoing terms, to be applicable where adjustment of general average is made in accordance with the laws and practice of the United States of America.	352 353 354
Paramount Clause	39. Charterers shall procure that all bills of lading issued under this charter shall contain the following Paramount Clause:-  "This bill of lading shall  (1) in relation to the carriage of any goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland have effect subject to the provisions of the Carriage of Goods by Sea Act, 1924, and to the Rules contained in the Schedule thereto as applied by that Act and nothing herein contained shall be deemed a surrender by the Carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the said Act;  (2) in relation to the carriage of any goods from any port of shipment in territory in which legislation similar in effect to the Carriage of Goods by Sea Act, 1924, of the United Kingdom is in force, have effect subject to such legislation and to the Rules contained in the Schedule thereto as applied by such legislation and nothing herein contained shall be deemed to be a surrender by the Carrier of any of his rights or immunities under the said legislation or an increase of any of his responsibilities or liabilities under the said legislation; and  (3) in any other case have effect as if the contract of carriage herein contained were a contract of carriage to which the provisions of the Carriage of Goods by Sea Act, 1924, of the United Kingdom applied and the Carrier shall be entitled to the benefit of the privileges, rights and immunities conferred by the said Act and the Rules contained in the Schedule thereto as if the same were herein specifically set out.  Many terms of this bill of lading be repugnant to the provisions of the said Act or to the said legislation to any extent, such term shall be void to that extent but no further."	355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374
Law and Jurisdiction	40. (a) This charter shall be construed and the relations between the parties determined in accordance with the Law of England.  (b) Any dispute arising under this charter shall be decided by the English Courts to whose jurisdiction the parties agree whatever their domicile may be:  Provided that either party may elect to have the dispute referred to the arbitration of a single arbitrator in London in accordance with the provisions of the Arbitration Act, 1950, or any statutory modification or re-enactment thereof for the time being in force. Such election shall be made by written notice by one party to the other not later than 21 days after receipt of a notice given by one party to the other of a dispute having arisen under this charter.	375 376 377 378 379 380 381 382 383
	41. Charterers agree to reimburse Owners for TOVALOP (or any successor or substitute organization) insurance premium and costs.	
	42. Owners have the option to perform periodical drydocking in Japan with 90 days advance notice and Charterers to agree to send the vessel to Persian Gulf. In this case no hire shall be payable for the following period as offhire: From the time of passing Quoin Island for loading cargo of Owners account to Japan, to the time of passing Quoin Island for loading cargo of Charterers account from Japan after drydocking.	

THE SANKO STEAMSHIP CO., LTD.

NEWFOUNDLAND REFINING COMPANY LIMITED

*Isamu Nishikawa*  
Isamu Nishikawa, Managing Director  
Attorney in Fact

*Roy E. Parmar*  
Roy E. Parmar, Executive Vice President



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## Exhibit 1

FORM B  
(July, 1969)PARTICULARS OF VESSEL  
- MHI Hull No. 1701 -

New York, August 8, 1972

This form is to be completed and returned to Shell International Marine Limited as soon as possible after charter negotiations are commenced. When completed and agreed the form will eventually be incorporated into the Charter Party and the particulars contained therein will be taken as representations by Owners and binding upon them.

Particulars to be  
Completed

1. CLASSIFICATION ... .. Nippon Kaiji Kyokai or Equivalent
2. DEADWEIGHT (Classified summer freeboard) ... .. about 233,000 L. tons
3. DIMENSIONS
- (a) Length overall ... .. about 321.00 meters
- (b) Length between perpendiculars ... .. about 304.00 meters
- (c) Beam extreme ... .. about 52.40 meters
- (d) Draft fully laden in salt water on classified summer freeboard ... .. about 19.81 meters
- (e) Underwater length measured between perpendiculars drawn at the after side of the rudder plate and at the foreside of the foremost extremity of any part of the hull which is below the baseline line drawn through the top of the rudder plate ... ..
4. MACHINERY
- (a) Type of Propelling Machinery ... .. Mitsubishi Turbine
- (b) Maximum rated B.H.P. and R.P.M. ... .. 34,000 B.H.P. @ 90 R.P.M.
- (c) Proposed service B.H.P. and R.P.M. ... .. 34,000 B.H.P. @ 90 R.P.M.
5. BOILER AND STEAM CAPACITY
- (a) Number and type ... .. Mitsubishi C.E. V2M - 8W x 2
- (b) Total heating surface ... .. 2 sets x 1,996 m<sup>2</sup>
- (c) Total service steam capacity ... .. 140,000 kg/h ~~130,000 kg/h~~
- (d) Guaranteed minimum temperature at which cargo heating can be maintained (in accordance with clause 1 (c) of Charter Party) ... .. Nil °C
- (e) Estimated steam required for maintaining heating as in (d) above ... .. Nil lbs. per hr.
- (f) Estimated steam required for essential auxiliaries and ship's services ... .. about 32,000 Kg/h ~~20,000 kg/h~~
- (g) Net steam available for driving cargo pumps (i.e. total steam available less that required for maintaining heat of cargo, driving auxiliaries and ship's services) ... .. about 108,000 Kg/h
6. SPEED AND CONSUMPTION
- (a) Speed on fully loaded trials at service B.H.P. and R.P.M. (as for 4 (c) above) ... .. 16.10 kts.
- (b) Average service speed (ballast) ... .. kts.
- (laden) - ... .. 16.50 kts.

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## Exhibit 1

FORM B (Continued)

Particulars to be  
Completed

## 10. AMIDSHIPS LOADING AND DISCHARGING MANIFOLDS

- (a) That is the distance of centre of manifolds from amidships (from mid-length position)? 2.5 meters
- (b) Distance of manifold flanges from ship's rail ... 15 feet
- (c) Height of centres of flanges above deck or working platform ... 3 feet
- (d) Distance between centres of manifold flanges ... 2.5 meters
- (e) Is vessel equipped with sufficient reducing pieces to enable loading and discharging connections on port or starboard sides to be connected to 12", 10" or 8" hoses? No
- (f) Number of loading/discharging lines can connect on each side ... 4
- (g) Number and position of bunkering connections relative to loading/discharging manifolds Amidship Fore P. & S. Amidship Aft. P. & S. Bridge house front P. & S.
- (h) Number and position of watering connections relative to loading/discharging manifolds ... to be fitted at stern
- (i) Do loading and discharging manifold arrangements comply with all other requirements of Item 13 in the Digest? No

## 11. CARGO AND BUNKERING LINES

Does arrangement of cargo lines, valves, gas vents etc. permit:

- (a) Stern as well as normal amidships loading/discharging for (i) Cargo ... No
- (ii) Bunkers ... No
- (b) State number of grades can load/discharge simultaneously through amidship connection with two valve separation without risk of contamination ... 2 Grades

## 12. BALLASTING SYSTEM

- (a) Is vessel equipped with separate ballasting system? Yes
- (b) State percentage of ship's summer deadweight separate system can contain ... about 16%
- (c) Time required load and discharge quantity of ballast as in (b) ...
- (i) Load ... Hrs.
- (ii) Discharge ... 12.67 hr. +  $\frac{1}{2}$  Hrs.

## 13. CARGO PUMPS

- (a) Number ... 3
- (b) Make ... Mitsubishi Kobe
- (c) Type ... Steam turbine driven horizontal centrifugal
- (1) If reciprocating:  
State distance from suction valve plates to base line of vessel ...
- (2) If Centrifugal:  
State distance from centre of impeller to base line of vessel ... 3.40 M
- (d) Size ... Suction Side 700 mm  
Discharge Side 600 mm



FORM B (Continued)

Particulars to be  
Completed

## 10. AMIDSHIPS LOADING AND DISCHARGING MANIFOLDS

- (a) What is the distance of centre of manifolds from amidships (from mid-length position)? 2.5 meters
- (b) Distance of manifold flanges from ship's rail ... 15 feet
- (c) Height of centres of flanges above deck or working platform ... 3 feet
- (d) Distance between centres of manifold flanges ... 2.5 meters
- (e) Is vessel equipped with sufficient reducing pieces to enable loading and discharging connections on port or starboard sides to be connected to 12", 10" or 8" hoses? ... No
- (f) Number of loading/discharging lines can connect on each side ... 4
- (g) Number and position of bunkering connections relative to loading/discharging manifolds Amidship Fore P. & S. Amidship Aft. P. & S. Bridge house front P. & S.
- (h) Number and position of watering connections relative to loading/discharging manifolds ... to be fitted at stern
- (i) Do loading and discharging manifold arrangements comply with all other requirements of Item 12 in the Digest? ... No

## 11. CARGO AND BUNKERING LINES

Does arrangement of cargo lines, valves, gas vents etc. permit:

- (a) Stern as well as normal amidships loading/discharging for (i) Cargo ... No
- (ii) Bunkers ... No
- (b) State number of grades can load/discharge simultaneously through amidship connection with two valve separation without risk of contamination ... 2 Grades

## 12. BALLASTING SYSTEM

- (a) Is vessel equipped with separate ballasting system? ... Yes
- (b) State percentage of ship's summer deadweight separate system can contain ... about 16%
- (c) Time required load and discharge quantity of ballast as in (b) ...
- (i) Load ... Hrs.
- (ii) Discharge ... ) 12.67 hr. + 1/2 Hrs.

## 13. CARGO PUMPS

- (a) Number ... 3
- (b) Make ... Mitsubishi Kobe
- (c) Type ... Steam turbine driven horizontal centrifugal
- (1) If reciprocating:  
State distance from suction valve plates to base line of vessel ...
- (2) If Centrifugal:  
State distance from centre of impeller to base line of vessel ... 3.40 M
- (d) Size ... Suction Side 700 mm  
Discharge Side 600 mm

FORM II (Continued)

Particulars to be  
Completed

## 13. CARGO PUMPS (Continued)

- (e) Designed rated capacity of each pump in cubic metres water per hour at 85 metres head at ship's manifold ... about 5,200 c.m.p.h.
- (f) Estimated steam consumption of each pump when discharging to capacity as per (e) above ... about 35,250 Kg/m ~~XXXXXX~~

## 14. STRIPPING PUMPS

- (a) Number and size ... 2 Mitsubishi Jet Stripping System
- (b) Capacity of each pump in cubic metres water per hour at 85 metres head at ship's manifold ... about 750 c.m.p.h.

## 15. HEATING COILS

- (a) Type of coils and material of which manufactured ...
- (b) Ratio of tank volume/heating surfaces
- (1) Centre tanks ...
- (2) Side tanks ...
- (c) Height of coils from tank bottoms ...
- Not applicable

## 16. SLOP TANKS AND TANK CLEANING

- (a) Is vessel fitted with a slop tank and able to fulfil Item 10 (a) in the Digest? ... Yes
- (b) Type of tank cleaning equipment fitted ... No 2C & No 4C Fixed Machine
- (c) Type of gas extraction equipment fitted ... Portable Turbine Fan ... Hy-Otac other Tanks Portable Machine Kappa N-3

## 17. MOORING AND LIFTING EQUIPMENT

- (a) Does vessel conform with Item 13 in the Digest? ... No
- (b) Safe working load of derrick or davit on poop deck 1 x SWL 1 ton 2 x SWL 1 ton ~~XXXXX~~
- (c) Safe working load of derricks in way of manifold ... 2 x 15 KT ~~XXXXX~~
- (d) Safe working load of derrick for handling forehold cargo ... Nil L.tons
- (e) Type of winches (electric, steam etc.) ... Steam

## 18. GENERAL

- (a) Are hull stress calculators fitted? ... No
- (b) Cubic capacity of forehold ... Nil
- (c) Is forehold registered for low flash cargoes? ... No
- (d) Does Radio equipment conform to Item 14 (a) (i) in the Digest? ... Yes
- (e) Type of Radio Telephone fitted ... SSBMF, SSBMHF, VHF telephone
- (f) Type of Automatic Pilot fitted ... Electric 2 way Steering Type
- 2 sets of Magnetic log Type with frequency of 200 l



## FORM B (Continued)

Particulars to be  
Completed

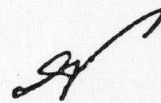
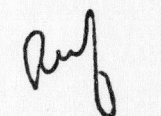
## 18. GENERAL (Continued)

- (h) Type of Radar fitted ... 3 cm & 5 cm band
- (i) Is Decca Navigator fitted? ... only wiring complete
- (j) Is submerged log fitted? ... Yes
- (k) Are any auxiliaries run on gasoil? ... No
- If so give details of consumption ... --
- (l) Type of power used for steering machinery ... Electric Hydraulic
- (m) Type of galley and fuel required ... Electric
- (n) Is Suez Canal Projector fitted? ... No
- (o) If vessel's dimensions compatible with Panama Canal transit will she comply with Panama Canal Regulations for the carriage of:
- (1) Grade "A" cargoes ... No
- (2) Grade "B" cargoes ... No
- (3) Grade "C" cargoes ... No
- (4) Grade "D" cargoes ... No

N.B.

When submitting this Form the following plans should be attached :-

- (1) General Arrangement Plan
  - (2) Pumping Arrangement Plan
  - (3) Plan of Cargo Tank Ventilating System
  - (4) Characteristic Curves of Pumps if Centrifugal Pumps installed.
- "Digest" refers to Shell International Marine Limited's Digest of Charterers' Requirements dated September 1967 and any subsequent amendments thereto.

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Exhibit 1

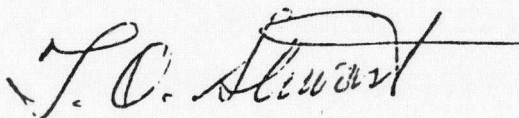
4th October, 1973.

CERTIFICATE OF DELIVERY

THIS IS TO CERTIFY THAT the Japanese resistered tanker  
"KYOKKO MARU" was delivered in all respect ready to Time-Charterers,  
Newfoundland Refining Company Ltd. from Owners, The Sanko Steamship  
Co., Ltd. at 20:19 hours GMT on the 15th September, 1973. in  
accordance with the terms, conditions and exceptions of the  
relevant Time Charter Party dated August 8, 1972.

The followings were remained on the board at time of delivery:

Fuel Oil	:	3,455 Long Tons
Diesel Oil	:	8 Long Tons
Drinking Water	:	110 Long Tons
Boiler Water	:	192 Long Tons

  
Newfoundland Refining Co., Ltd.  
Charterers,

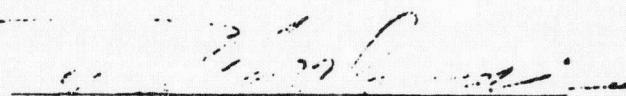
  
The Sanko Steamship Co., Ltd.  
Owners,



EXHIBIT 2--CHARTER PARTY (ELEFTHEROUPOLIS) ANNEXED  
TO AFFIDAVIT OF ROY M. FURMARK"Eleftheroupolis"

## Time Charter Party

Code word for this Charter Party  
"SHELLTIME 3"

Issued June 1963

LONDON, 19  
NEW YORK, August 8, 1972

of about 271,000 DWT at summer draft about 21.30 meter	It is this day agreed between The Sanko Steamship Company Limited	
	of Tokyo, Japan (hereinafter referred to as "Owners"), being Owners of the	1
	goodnewbuilding steampunk vessel called Sasebo Heavy Industries Co., Ltd. Hull No. 230 to be named with Japanese, Liberian, Panamanian or Singapore flag (hereinafter referred to as "the vessel") described as per clause 24 hereof and Newfoundland Refining Company Ltd. St. John's, Newfoundland of (hereinafter referred to as "Charterers").	2 3 4
Description of Vessel	1. Owners guarantee that at the date of delivery of the vessel under this charter (a) she shall be classed Nippon Kaiji Kyokai or equivalent. (b) she shall be in every way fitted for burning marine diesel oil or fuel oil with a maximum viscosity of 3500 seconds Redwood 1 at 100 degrees F. in main motors and any commercial grade of fuel oil under boilers; and 10,280 Kcal/K.G. (H.C.V.) (c) <del>she shall be fitted with a main engine of 10,280 Kcal/K.G. (H.C.V.)</del>	5 6 7 8 9 10 11
Condition of Vessel	2. Owners shall, before and at the date of delivery of the vessel under this charter, exercise due diligence to make the vessel (a) in every way fit to carry crude petroleum and/or its products; and (b) tight, staunch, strong, in good order and condition, in every way fit for the service, with her machinery, boilers and hull in such a state as to obtain the most economic working and with a full and efficient complement of master, officers and crew for a vessel of her tonnage. Owners undertake that throughout the period of service under this charter they will, whenever the passage of time, wear and tear or any event (whether coming within clause 28 hereof or not) requires steps to be taken to maintain the vessel as stipulated in clause 1 hereof and in this clause or to restore the vessel to such condition, exercise due diligence to maintain or restore the vessel as aforesaid, and that they will comply with the regulations in force so as to enable the vessel to pass through the Suez and Panama Canals by day and night without delay.	12 13 14 15 16 17 18 19 20 21 22 23
But in case Charterer declare not perform contract of Affreightment under Charter Party of New York August 8, 1972 the total period of this Time Charter to be 10(Ten) years 14 days more or less at Charterers option	3. Owners agree to let and Charterers agree to hire the vessel for a period of 9-1/2(Nine years and six months) years, 14(Fourteen) days more or less at Charterers option	24
Period and Trading Limits	of carrying all lawful merchandise including in particular crude oil and/or its dirty petroleum products.	25 26
excluding communist and communist controlled countries Cuba and Israel ports, except with Owners' prior consent which not to be unreasonably withheld.	in any part of the world; as Charterers shall direct, subject to the limits of the current British Institute Warranties and any subsequent amendments thereof, it being understood that Charterers shall not send the vessel to ice-bound waters without Owners' consent but such consent shall not be unreasonably withheld. Charterers shall exercise due diligence to ensure that the vessel is only employed between and at safe ports, places, berths, docks, anchorages and submarine lines where she can always lie safely afloat, but notwithstanding anything contained in this or any other clause of this charter, Charterers shall not be deemed to warrant the safety of any port, place, berth, dock, anchorage or submarine line and shall be under no liability in respect thereof except for loss or damage caused by their failure to exercise due diligence as aforesaid. Subject as above, the vessel shall be loaded and discharged in any dock or at any wharf or place or anchorage or submarine line or alongside lighters or other vessels as Charterers may direct.	27 28 29 30 31 32 33 34 35 36
a port in Japan or at a port or point not further in distance from the Persian Gulf than the port of delivery	The vessel shall be delivered by Owners at a port in Japan, or at a point not further in distance from Persian Gulf than Japan at Owners' option and redelivered to Owners at Charterers' option. Owners shall notify Charterers of the estimated time of delivery in written letter, telex or cable on 30(Thirty) days at least prior to delivery and	37 38 39 40



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## Exhibit 2

Laydays/ Cancelling	4. The vessel shall not be delivered to Charterers before April 1, 1974	40
	and Charterers shall have the option of cancelling this charter if the vessel is not ready and at their disposal on or before May 31, 1974	41 42
Owners to Provide	5. Owners undertake to provide and to pay for all provisions, wages, and shipping and discharging fees and all other expenses of the master, officers and crew, also, except as provided in clauses 34 and 35 hereof, to pay for all insurance on the vessel, for all deck, cabin and engine-room stores, and water, except water for the boilers which (unless the vessel is off-hire) is to be supplied and paid for by Charterers; and for all fumigation expenses and dematuration exemption certificates. Owners' obligations under this clause extend to cover all liability for customs or import duties arising at any time during the performance of this charter in relation to the personal effects of the master, officers and crew, and in relation to the stores, provisions and other matters aforesaid which Owners are to provide and/or pay for and Owners shall refund to Charterers any sums they or their agents may have paid or been compelled to pay in respect of such liability. Any amounts allowable in general average for wages and provisions and stores shall be credited to Charterers insofar as such amounts are in respect of a period when the vessel is on hire.	43 44 45 46 47 48 49 50 51 52 53
Charterers to Provide	6. Charterers shall provide and pay for all fuel (except galley fuel), towage and pilotage and shall pay agency fees, port charges, commissions, expenses of loading and unloading cargoes, canal dues and all charges other than those payable by Owners in accordance with the preceding clause hereof, provided that discharges for the said items shall be paid by Owners when incurred for Owners' purposes, whether the vessel is on hire or off-hire. The foregoing provision as to fuel shall not apply to any fuel used in connection with a general average sacrifice or expenditure or with the preparation for and the drydocking or repair of the vessel which shall in any event be paid for by Owners.	54 55 56 57 58 59 60
Rate of Hire	7. Subject as herein provided Charterers shall pay for the use and hire of the vessel at the rate of U.S.\$2.40 (Two United States Dollars and Forty Cents) per ton of <del>the vessel's total deadweight on</del> <u>classified summer freeboard, as assigned at the date hereof,</u> <u>of delivery</u> <u>2,240 lbs.</u> per calendar month, commencing at and from the time and date of her delivery as aforesaid, and pro rata for any part of a month, and continuing until the time and date of her redelivery to Owners.	61 62 63 64 65
Payment of Hire	8. Payment of the said hire shall be made in <del>advance</del> <u>United States Currency in New York to Owners' account</u> monthly in advance less any amounts disbursed on Owners' behalf and less any hire paid or expenses incurred by Charterers as may reasonably be estimated by them to relate to off-hire periods, and less any amounts due or estimated to become due to Charterers under the terms of clause 24 hereof, any adjustment to be made at the due date for the next monthly payment after the facts have been ascertained. In default of such payment Owners may withdraw the vessel from the service of Charterers, without prejudice to any claim Owners may otherwise have on Charterers under this charter.	66 67 68 69 70 71 72
Space Available to Charterers	9. The whole reach, burthen and decks of the vessel and its passenger accommodation (which shall be deemed to include Owners' suite), if any, shall be at Charterers' disposal, reserving only proper and sufficient space for the vessel's master, officers, crew, tackle, apparel, furniture, provisions and stores, provided that the weight of stores on board shall not, unless specially agreed, exceed 700 tons at any one time during the period of the charter. The vessel shall load and discharge cargo as rapidly as possible by night as well as by day when required by Charterers or their agents to do so. Charterers may consistently with the safety of the vessel remove any stanchions and ladders, which shall, if required, be replaced by them before redelivery at their own expense and to the satisfaction of Owners' surveyor. <u>U.S. Dollars 700 lumpsum monthly</u>	73 74 75 76 77 78 79 80
Duties of Master	10. The master shall prosecute his voyages with the utmost despatch and shall render all reasonable assistance with the vessel's officers and crew and equipment; overtime pay of the master, officers and crew in accordance with ship's articles being at Charterers' expense when incurred as a result of complying with the request of Charterers or their agents.	81 82 83 84
Instructions and Logs	11. The master shall be furnished by Charterers from time to time with all requisite instructions and sailing directions, and shall keep a full and correct log of the voyage or voyages, which shall be open to inspection by Charterers or their agents as required. The master shall furnish Charterers or their agents when required to do so with a true copy of such log and with properly completed loading and discharging port sheets and voyage reports for each voyage and other returns as Charterers may require. Charterers shall be entitled to take copies at Owners' expense of any of such documents as are not provided by the master.	85 86 87 88 89 90
Conduct of Vessel's Personnel	12. If Charterers shall complain of the conduct of the master or any of the officers, Owners and Charterers jointly shall immediately investigate the complaint, and if the complaint prove to be well founded, Owners shall, without delay, make a change in the appointments.	91 92 93
Bills of Lading	13. The master (although appointed by Owners) shall be under the orders and direction of Charterers as regards employment of the vessel, agency or other arrangements. Bills of lading are to be signed at any rate of freight Charterers or their agents may direct, without prejudice to this charter, the master attending as necessary at the offices of Charterers or their agents to do so. Charterers hereby indemnify Owners against all consequences or liabilities that may arise from the master, Charterers or their agents signing bills of lading or other documents, or from the master otherwise complying with Charterers' or their agents' orders, as well as from any irregularities in papers supplied by Charterers or their agents. The said indemnity shall not extend to any consequences or liabilities or apply to any loss or damage arising from orders to proceed to, enter, remain in or at, depart from or shift berth in or at any port, place, berth, dock, anchorage or submarine line, other than consequences or liabilities or loss or damage resulting from or caused by failure to exercise due diligence as required by clause 3 hereof.	94 95 96 97 98 99 100 101 102 103 104
Stowage	Stewards when required shall be employed and paid by Charterers, but this shall not relieve Owners from responsibility at all times for proper stowage, which must be controlled by the master, who shall keep a strict account of all cargo loaded and discharged. Owners hereby indemnify Charterers, their servants and agents, against all losses, claims, responsibilities and liabilities arising in any way whatsoever from the employment of pilots, tugboats or stewards who although employed by Charterers shall be deemed to be the servants and in the service of Owners and under their instructions.	105 106 107 108 109 110
Bunkers at Delivery and Redelivery	14. Charterers shall accept and pay for all bunker oil and boiler water on board at the time of delivery, and Owners shall, on the expiry of this charter, pay for all bunker oil and boiler water then remaining on board at current market prices at the respective ports. Owners shall give Charterers the use and benefit of any fuel contracts they may have in force, at home and/or abroad, if so required by Charterers, provided suppliers agree.	111 112 113 114 115
	* but such indemnity shall not exceed the amount to which Owners would have been entitled to limit their liability if they had themselves employed such pilots, tugboats and stewards.	

*Ref*



Passengers	15. Charterers may send passengers in the vessel's available accommodation upon any voyage made under this charter. Owners finding provisions and all requisites as supplied to officers, except liquors, Charterers paying at the rate of \$54.00 per day for each passenger while on board the vessel.	116 117 118
Sub-let	16. Charterers may sub-let the vessel, but shall always remain responsible to Owners for the due fulfilment of this charter.	119 120
Infected Area and Infraction of Local Law	17. Owners shall be liable for any delay in quarantine arising from the master, officers or crew having communication with the shore at any infected area without the written consent or instructions of Charterers or their agents, also for any loss of time through detention by customs or other authorities caused by smuggling or other infraction of local law on the part of the master, officers or crew.	121 122 123 124
Final Voyage	18. Should the vessel be on her voyage towards the port of redelivery at the time a payment of hire is due, payment of hire shall be made for such length of time as Owners and Charterers may agree upon as being the estimated time necessary to complete the voyage, less any disbursements made or expected to be made or expenses incurred or expected to be incurred by Charterers for Owners' account and less the estimated value of bunker fuel remaining at the termination of the voyage, and when the vessel is redelivered any overpayment shall be refunded by Owners or underpayment paid by Charterers. Notwithstanding the provisions of clause 3 hereof, should the vessel be upon a voyage at the expiry of the period of this charter, Charterers shall have the use of the vessel at the same rate and conditions for such extended time as may be necessary for the completion of the round voyage on which she is engaged and her return to a port of redelivery as provided by this charter.	125 126 127 128 129 130 131 132 133
Loss of Vessel	19. Should the vessel be lost, hire shall cease at noon on the day of her loss and, should the vessel be missing, hire shall cease at noon on the day on which she was last heard of, and any hire paid in advance and not earned shall be returned to Charterers. <u>In a port which to be mutually agreed between Owners and Charterers.</u>	134 135 136
Laying-up	20. Charterers shall have the option of laying up the vessel, in which case the hire provided for under this charter shall be reduced by the amount by which Owners can reasonably reduce the expenditure otherwise falling upon them under this charter.	137 138 139
Off-Hire	21. In the event of loss of time (whether arising from interruption in the performance of the vessel's service or from reduction in the speed of the performance thereof or in any other manner) (a) continuing for more than 24 hours, due to deficiency of personnel or stores, repairs, breakdown (whether partial or otherwise) of machinery or boilers, collision or stranding or accident or damage to the vessel or any other cause preventing the efficient working of the vessel; or (b) whether or not continuing for 24 hours, (i) due to strikes, refusal to sail, breach of orders or neglect of duty on the part of the master, officers or crew; or (ii) for the purpose of obtaining medical advice or treatment for or landing any sick or injured person (other than a passenger carried under clause 15 hereof) or for the purpose of landing the body of any person (other than such a passenger); hire shall cease to be due or payable from the commencement of such loss of time until the vessel is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced. Any such loss of time which arises wholly or partly from a reduction in the vessel's guaranteed average speed provided in clause 24 hereof shall be taken to be the difference between the time the vessel would require to perform the relevant service at the said speed and the time actually taken to perform the same and such loss of time shall be added to any loss of time arising from interruption in the performance of the vessel's service in order to arrive at the said period of 24 hours. Further and without prejudice to the foregoing, in the event of the vessel deviating (which expression includes putting back, or putting into any port other than that to which she is bound under the instructions of Charterers) for any cause or for any purpose previously mentioned in this clause, no hire shall in any case be payable as from the commencement of such deviation until the time when the vessel is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which the deviation commenced. In the event of the vessel, for any cause or for any purpose previously mentioned in this clause, putting into any port other than the port to which she is bound on the instructions of Charterers, the port charges, pilotage and other expenses at such port shall be borne by Owners. Should the vessel be driven into port or any anchorage by stress of weather hire shall continue to be due and payable during any loss of time caused thereby. In the event of detention of the vessel by authorities at home or abroad in consequence of legal action against Owners (unless brought about by the act or neglect of Charterers), whereby the vessel is rendered unavailable for Charterers' service, the vessel shall be off-hire until the service can again be resumed. If the nation to which the vessel belongs becomes engaged in hostilities, hire and all other charges shall cease during the continuance of such hostilities if Charterers in consequence of such hostilities find it impossible to employ the vessel and in that event Owners shall have the right to employ the vessel on their own account. All drydock charges shall be at Owners' expense. Time lost by the vessel gasfreighting for repairs and in and waiting her turn to enter drydock shall, irrespective of duration, count as off-hire. Any loss of time during which the vessel is off-hire as provided in this and the succeeding clause shall count as part of the charter period.	140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177
Periodical Drydocking	22. Owners undertake that <del>within</del> <u>within</u> <del>the</del> <u>the</u> <del>months</del> <u>months</u> after the vessel was last drydocked and at the expiry thereafter of each <del>three</del> <u>three</u> months of continuous use under the charter they will put the vessel in drydock and clean and paint her bottom at their expense as soon thereafter as Charterers place the vessel at Owners' disposal, clear of cargo, at a port having suitable accommodation for the purpose.	178 179 180 181
Owners	Notwithstanding the provision in the preceding clause as to time lost by the vessel gasfreighting, time lost in making tanks free of gas, as distinct from tank cleaning, for the purpose solely or primarily of periodical bottom cleaning and gasfreighting shall be for the account of Charterers provided Owners shall have exercised due diligence to make the tanks free of gas before the arrival of the vessel at the drydocking port or as soon as practicable thereafter.	182 183 184 185

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Ref. 87



...at the date of delivery of the vessel under this charter furnish charterers with a similar description, which description to be based on final particulars of the vessel.

The vessel shall be off-hire from the time of arrival at the drydocking port but provided due diligence is exercised as aforesaid any time lost thereafter in gasfreem for the purpose aforesaid shall be excluded from the off-hire period and shall count as on hire. The vessel shall remain off-hire until she is again in every way ready to resume Charterers' service at the position at which the off-hire period commenced, or at an equivalent position. The expense of gasfreem, which shall include the cost of bunkers used, shall be for Owners' account.

If Owners require the vessel to proceed to any special port for periodical docking purposes, no hire shall be payable for time lost in proceeding to, whilst at and after leaving such special port until reaching a position equivalent to that at which the off-hire period commenced, nor for the time lost in making tanks free of gas for such docking; all fuel consumed and all other expenses incurred in the course thereof shall be paid for by Owners. Charterers crediting Owners with any benefit they may gain in purchasing fuel at the special port aforesaid. All drydocking shall be at Owners' expense. Time spent by the vessel in and waiting her turn to enter drydock shall, irrespective of duration, count as off-hire.

Boiler  
Cleaning, etc.

23. Owners undertake that all cleaning of boilers and/or opening up of pistons and/or overhauling of engines shall be carried out so far as is practicable during periods when the vessel is off-hire, and in any event so as to avoid or minimise delay to the vessel. If and in so far as it is not practicable to carry out the said work while the vessel is off-hire or concurrently with other work, and provided that Owners obtain Charterers' prior approval, a maximum of 72 hours, which shall be cumulative, shall be allowed on hire as and when necessary in any year, or pro rata for part of a year from the commencement of the Charter period for carrying out the said work.

which description to be based on preliminary particulars of the vessel

Nothing in this clause shall affect any other term of this charter which provides that the vessel shall be off-hire.

Detailed  
Description  
and Performance

24. Owners warrant that at the date of delivery under this charter the vessel shall be of the description set out in Form B dated Aug. 8, 1972 attached hereto and signed by them and undertake to use their best endeavours so to maintain the vessel during the period of her service hereunder. Further but otherwise without prejudice to the generality of this clause Owners guarantee that the average speed of the vessel will be not less than 6.1 knots, with a maximum bunker consumption of 175 tons fuel oil per day for all purposes excluding cargo heating and tank cleaning.

d on 50%  
n/50% in  
ast

with a maximum viscosity of 1,000 seconds Redwood No. 1 at 100 F 10,280 Kcal/kg

The aforesaid average speed shall be calculated in each yearly or other less period, as defined hereinafter, over the whole of the time the vessel is on hire during such period by reference to the observed distance from pilot station to pilot station on all sea passages during such period otherwise than as provided in clause 23 hereof.

If during any year from the commencement of the charter period Owners fail to comply with their obligations under this clause hire shall be reduced to the extent necessary to indemnify Charterers for such failure. Where the failure to comply with the said obligations affects the time taken by the vessel to perform any of her services hire shall be reduced in an amount proportionate to the loss of time involved. Reduction of hire under the foregoing provisions shall be without prejudice to any other remedy available to Charterers.

Claims in respect of reduction of hire arising under this clause during the final year or part year of the charter period as specified in clause 3 hereof and any extension thereof under this charter shall in the first instance be settled in accordance with Charterers' estimate made two months before the end of the charter period as so specified. Any necessary adjustment after the end of the charter shall be made by payment by Owners to Charterers or Charterers to Owners as the case may require.

preliminary

In the event of any conflict between the particulars set out in the aforesaid Form B and any other provision (including this clause) of this charter such other provision shall prevail.

Tanks, etc.

25. Owners guarantee that the tanks, valves and pipelines are oil-tight at the commencement of this charter, and Owners bind themselves to take every possible precaution to maintain the tanks, valves and pipelines in this condition during the charter period.

Salvage

26. All salvage and all proceeds from derelicts shall be divided equally between Owners and Charterers after deducting the master's, officers' and crew's share, hire of vessel for time lost and cost of fuel consumed and all other expenses incurred. Subject as aforesaid, and subject to the provisions of clause 21 hereof, all loss of time and all expenses (excluding any damage to or loss of the vessel) incurred in saving or attempting to save life and in unsuccessful attempts at salvage shall be borne equally by Owners and Charterers; provided that Charterers shall not be liable to contribute towards any salvage payable by Owners using in any way out of services rendered under this clause.

Lien

27. Owners shall have a lien upon all cargoes and all freights for any amounts due under this charter; and Charterers shall have a lien on the vessel for all moneys paid in advance and not earned, and for all claims for damages arising from any breach by Owners of this charter.

Exceptions

28. Save that clauses 1, 2 and 24 hereof shall be unaffected hereby, the vessel, her master and Owners shall not, unless otherwise in this charter expressly provided, be responsible for any loss or damage arising or resulting from any act, neglect or default of the master, pilots, mariners or other servants of Owners in the navigation or management of the vessel; fire, unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the sea; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery. And neither the vessel, her master or Owners, nor Charterers shall, unless otherwise in this charter expressly provided, be responsible for any loss or damage or delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people. The vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress and to deviate for the purpose of saving life or property. This clause is not to be construed as in any way affecting the provisions for cessation of hire as provided in this charter.

Injurious  
Cargoes

29. No acids, explosives or cargoes injurious to the vessel shall be shipped, nor shall any voyage be undertaken, nor goods or cargoes be loaded, that would involve risk of seizure, capture, or penalty imposed by British or foreign rulers or governments, and without prejudice to the foregoing any damage to the tanks caused by the shipment of any such cargo as aforesaid shall be at Charterers' risk and expense, and the time taken to repair such damage shall be for Charterers' account.

Grade of  
Bunkers

30. Charterers have the option of supplying for use in the main motors marine diesel oil or fuel oil with a maximum viscosity of 1000 seconds Redwood 1 at 100 degrees F. and for use under the boilers any commercial grade of fuel oil. If Owners require the vessel to be supplied with more expensive bunkers they shall be liable for the extra cost thereof.

in moderate weather

(H.C.V.)

Ref



A 42  
Exhibit 2

		of the bill of lading of the vessel
Disbursements	31. Should the master require advances for ordinary disbursements at any port, Charterers or their agents shall make such advances to him, in consideration of which Owners shall pay a commission of 2½ per cent, and all such advances shall be deducted from hire.	240 261 252
Requisition	32. Should the vessel be requisitioned by the Government during the period of this charter, the vessel shall be deemed to be off-hire during the period of such requisition, and any hire paid by the said Government in respect of such requisition period shall be for Owners' account. The period during which the vessel is on requisition to the said Government shall count as part of the period provided for in clause 3 of this charter.	263 264 265 266 267
Outbreak of War	33. If war or hostilities break out between any two or more of the following countries: United Kingdom, United States of America, Union of Soviet Socialist Republics, Peoples Republic of China, Canada, Japan, Charterers shall have the right of cancelling the charter, upon 60 days prior notice of the Cancellations due to commencement of Hostilities.	268 269 270 271
Additional War Expenses	34. Any extra expenses which may be incurred by Owners if the vessel has to trade in areas where there is war (de facto or de jure) shall be borne by Charterers, provided that before such expenses are incurred Charterers are given an opportunity to signify their approval. Any increase in war bonus to the Charterer	272 273 274
Master Officer and Crew	35. War and/or mine risk insurance, if any, shall be for Owners' account, but notwithstanding the provisions of clause 5 hereof, war risk insurance on hull and machinery on a mutually agreed value in excess of the rate ruling at the date hereof shall be for Charterers' account.	275 276 277
War Insurance		277
War Risks	36. (1) The master shall not be required or bound to sign bills of lading for any blockaded port or for any port which the master or Owners in his or their discretion consider dangerous or impossible to enter or reach.	278 279 280
	(2) (A) If any port of loading or of discharge named in this charter or to which the vessel may properly be ordered pursuant to the terms of the bills of lading be blockaded, or	281 282
	(B) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions, or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the master or Owners in his or their discretion dangerous or impossible for the vessel to reach any such port of loading or of discharge,	283 284 285 286 287
	Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other port of loading or of discharge within the range of loading or discharge ports respectively established under the provisions of the charter (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the master's or Owners' discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from Charterers within 48 hours after they or their agents have received from Owners a request for the nomination of a substitute port, Owners shall then be at liberty to discharge the cargo at any port which they or the master may in their or his discretion decide on (whether within the range of discharge ports established under the provisions of the charter or not) and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharge ports established under the provisions of the charter, the charter shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. However, if the vessel discharges the cargo at a port outside the range of discharge ports established under the provisions of the charter, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and/or discharging the cargo thereat shall be paid by Charterers or cargo owners. In this latter event Owners shall have a lien on the cargo for all such extra expenses.	288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304
	(3) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any other wise whatsoever given by the government of the nation under whose flag the vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations anything is done or is not done, such shall not be deemed a deviation.	305 306 307 308 309 310 311 312
	If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the bills of lading, the vessel may proceed to any port of discharge which the master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and Owners shall be entitled to freight as if discharge had been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the bills of lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by Charterers and/or cargo owners and Owners shall have a lien on the cargo for freight and all such expenses.	313 314 315 316 317 318 319 320 321
	Charterers shall procure that all bills of lading issued under this charter shall contain the foregoing clause so far as applicable to bills of lading.	322 323
Both to Blame Collision Clause	37. If the liability for any collision in which the vessel is involved while performing this charter falls to be determined in accordance with the laws of the United States of America, the following provisions shall apply:-	324 325
	"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, manager, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss, or disability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.	326 327 328 329 330 331 332
	The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact."	333 334 335

Bmf



	Charterers shall procure that all bills of lading issued under this charter shall contain a provision in the foregoing terms, to be applicable where the liability for any collision in which the vessel is involved falls to be determined in accordance with the laws of the United States of America.	316 317 318
New Jason Clause	38. General average shall be payable according to the York/Antwerp Rules, 1950, and shall be adjusted in London but should adjustment be made in accordance with the law and practice of the United States of America, the following provision shall apply:-  "In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.  If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."	319 340 341 342 343 344 345 346 347
	Charterers shall procure that all bills of lading issued under this charter shall contain a provision in the foregoing terms, to be applicable where adjustment of general average is made in accordance with the laws and practice of the United States of America.	352 353 354
Paramount Clause	39. Charterers shall procure that all bills of lading issued under this charter shall contain the following Paramount Clause:-  "This bill of lading shall  (1) in relation to the carriage of any goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland have effect subject to the provisions of the Carriage of Goods by Sea Act, 1924, and to the Rules contained in the Schedule thereto as applied by that Act and nothing herein contained shall be deemed a surrender by the Carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the said Act;  (2) in relation to the carriage of any goods from any port of shipment in territory in which legislation similar in effect to the Carriage of Goods by Sea Act, 1924, of the United Kingdom is in force, have effect subject to such legislation and to the Rules contained in the Schedule thereto as applied by such legislation and nothing herein contained shall be deemed to be a surrender by the Carrier of any of his rights or immunities under the said legislation or an increase of any of his responsibilities or liabilities under the said legislation; and  (3) in any other case have effect as if the contract of carriage herein contained were a contract of carriage to which the provisions of the Carriage of Goods by Sea Act, 1924, of the United Kingdom applied and the Carrier shall be entitled to the benefit of the privileges, rights and immunities conferred by the said Act and the Rules contained in the Schedule thereto as if the same were herein specifically set out.  If any term of this bill of lading be repugnant to the provisions of the said Act or to the said legislation to any extent, such term shall be void to that extent but no further."	355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374
Law and Litigation	40. (a) This charter shall be construed and the relations between the parties determined in accordance with the law of England.  (b) Any dispute arising under this charter shall be decided by the English Courts to whose jurisdiction the parties agree whatever their domicile may be:  Provided that either party may elect to have the dispute referred to the arbitration of a single arbitrator in London in accordance with the provisions of the Arbitration Act, 1950, or any statutory modification or re-enactment thereof for the time being in force. Such election shall be made by written notice by one party to the other not later than 21 days after receipt of a notice given by one party to the other of a dispute having arisen under this charter.  41) Charterers agree to reimburse Owners for TOVALOP (or any successor or substitute organization) insurance premium and costs.  42) Owners have the option to perform periodical drydocking in Japan with 90 days advance notice and Charterers to agree to send the vessel to Persian Gulf. In this case no hire shall be payable for the following period as offhire: From the time of passing Quoin Island for loading cargo of Owners account to Japan, to the time of passing Quoin Island for loading cargo of Charterers account from Japan after drydocking.	375 376 377 378 379 380 381 382 383

THE SANKO STEAMSHIP CO., LTD.

*Isamu Nishikawa*  
Isamu Nishikawa, Managing Director  
Attorney in Fact

DATE: August 8, 1972

NEWFOUNDLAND REFINING COMPANY LIMITED

*Foy A. Furmark*  
Foy A. Furmark, EXECUTIVE VICE PRESIDENT



A 44

## Exhibit 2

FORM B  
(July, 1969)

## PARTICULARS OF VESSEL NEW YORK, AUGUST 8, 1972

SASEBO HULL NO. 230

This form is to be completed and returned to Shell International Marine Limited as soon as possible after charter negotiations are commenced. When completed and agreed the form will eventually be incorporated into the Charter Party and the particulars contained therein will be taken as representations by Owners and binding upon them.

Particulars to be  
Completed

1. CLASSIFICATION ... NIPPON KAIJI KYOKAI OR EQUIVALENT ... ..
2. DEADWEIGHT (Classified summer freeboard) ... .. abt. 271,000 L. tons
3. DIMENSIONS
- (a) Length overall ... .. " 340 M
- (b) Length between perpendiculars ... .. " 324 M
- (c) Beam extreme ... .. " 53.50 M
- (d) Draft fully laden in salt water on classified summer freeboard ... .. " 21.30 M
- (e) Underwater length measured between perpendiculars drawn at the after side of the rudder plate and at the foreside of the foremost extremity of any part of the hull which is below the horizontal line drawn through the top of the rudder plate ... ..
4. MACHINERY
- (a) Type of Propelling Machinery ... CROSS COMPOUND STEAM TURBINE ... .. S.P.S.
- (b) Maximum rated B.H.P. and R.P.M. ... .. 36,000 ~~XCHXX~~ @ 90 R.P.M. S.P.S.
- (c) Proposed service B.H.P. and R.P.M. ... .. 36,000 ~~XCHXX~~ @ 90 R.P.M. S.P.S.
5. BOILER AND STEAM CAPACITY
- (a) Number and type ... 2 SETS SASEBO - FW "MD" MOND-WALL ... .. WATER TUBE TYPE
- (b) Total heating surface ... ..
- (c) Total service steam capacity ... .. abt 251,000 lbs. per hr.
- (d) Guaranteed minimum temperature at which cargo heating can be maintained (in accordance with clause 1 (c) of Charter Party) ... .. °C
- (e) Estimated steam required for maintaining heating as in (d) above ... .. lbs. per hr.
- (f) Estimated steam required for essential auxiliaries and ship's services ... .. lbs. per hr.
- (g) Net steam available for driving cargo pumps (i.e. total steam available less that required for maintaining heat of cargo, driving auxiliaries and ship's services) ... TO BE ADVISED
6. SPEED AND CONSUMPTION
- (a) Speed on fully loaded trials at service B.H.P. and R.P.M. (as for (c) above) ... .. kts.
- (b) Average service speed ~~(kts)~~ IN MODERATE WEATHER ... .. kts.
- BASED ON 50% LADEN/50% BALLAST ... .. 16.10 kts.
- ~~16.10~~ kts.

FORM B (Continued)

Particulars to be  
Completed

## 6. SPEED AND CONSUMPTION (Continued)

(c) Fuel consumption per day at sea for all purposes except cargo heating or tank cleaning at average service speed:

(1) Main engines or boilers ... 175 L. tons per day

Grade of bunkers MAX VISCOSITY OF 3,500 SECS. R.W. NO.1 AT 100°F

(2) Auxiliary boilers (if auxiliaries are electrically driven consumption of diesel generators) ...

L. tons per day

Grade of bunkers

## 7. BUNKER AND WATER CAPACITY

## STEAMING RANGES

## BUNKERS

		Fuel	Diesel
(a) Maximum rates at which lines will receive bunkers	TO BE ADVISED.	<del>XXXX</del>	<del>XXXXXX</del>
(b) Bunker consumption per L. ton of water evaporated	TO BE ADVISED	<del>XXXX</del>	<del>XXXX</del>
(c) Capacity of bunker tanks	abt 14,000	m <sup>3</sup> aut. m <sup>3</sup> <del>XXXX</del> 200 <del>XXXX</del>	
(d) Steaming range afforded by capacity of bunker tanks	abt 25,900	Miles	
(e) Number of grades of bunkers can segregate	TO BE ADVISED	Grades	

## FRESH WATER

(a) Is vessel equipped with fresh water evaporating capacity (and sterilizing equipment where necessary) sufficient to meet all needs of boilers, washing and potable purposes?		YES
(b) Capacity of water tanks	abt 700	L. tons
(c) Steaming range afforded by capacity of water tanks		Miles
(d) Daily consumption of boilers	TO BE ADVISED	L. tons
(e) Daily consumption other purposes	TO BE ADVISED	L. tons
(f) Evaporator capacity	abt 40	L. tons p.d.

## LOADING/DISCHARGING ARRANGEMENTS

## 8. CARGO TANKS

(a) Number of compartments	21 (INCL. 2 SLOP TANKS)	
(b) Total capacity in fresh water tons (98% full)	abt 323,000	L. tons
(c) Number of grades can segregate with two valve separation	2	Grades
(d) Can vessel fulfil requirement of item 2A in the Digest?	TO BE ADVISED	
(e) Can vessel load/discharge cargo with up to 14 lbs. Reid's vapour pressure?	YES	

## 9. CARGO LOADING PERFORMANCE.

(a) Maximum rate at which vessel can load homogeneous cargo	abt 18,000	L. tons per hr.
(b) Maximum rate at which vessel can load each grade when loading two grades simultaneously	TO BE ADVISED	L. tons per hr.



FORM H (Continued)

Particulars to be  
Completed

## 10. AMIDSHIPS LOADING AND DISCHARGING MANIFOLDS

- (a) What is the distance of centre of manifolds from amidships (from mid-length position)? TO BE ADVISED
- (b) Distance of manifold flanges from ship's tail ... .. -"-
- (c) Height of centres of flanges above deck or working platform ... .. -"-
- (d) Distance between centres of manifold flanges ... .. -"-
- (e) Is vessel equipped with sufficient reducing pieces to enable loading and discharging connections on port or starboard sides to be connected to 12", 10" or 8" hoses? YES
- (f) Number of loading/discharging lines can connect on each side ... .. 4
- (g) Number and position of bunkering connections relative to loading/discharging manifolds ... .. TO BE ADVISED
- (h) Number and position of watering connections relative to loading/discharging manifolds ... .. -"-
- (i) Do loading and discharging manifold arrangements comply with all other requirements of Item 12 in the Digest? ... .. -"-

## 11. CARGO AND BUNKERING LINES

Does arrangement of cargo lines, valves, gas vents etc. permit:

- (a) Stern as well as normal amidships loading/discharging for (i) Cargo ... .. TO BE ADVISED
- (ii) Bunkers ... .. -"-
- (b) State number of grades can load/discharge simultaneously through amidship connection with two valve separation without risk of contamination ... .. -"- Grades

## 12. BALLASTING SYSTEM

- (a) Is vessel equipped with separate ballasting system? ... .. YES
- (b) State percentage of ship's summer deadweight separate system can contain ... abt 11 %
- (c) Time required load and discharge quantity of ballast as in (b) ... .. TO BE ADVISED
- (i) Load ... .. Hrs.
- (ii) Discharge ... .. Hrs.
- (d) BALLAST PUMP  
2,000 m<sup>3</sup>/h x 155 m/HEAD ..... 1 SET

## 13. CARGO PUMPS

- (a) Number ... .. 4
- (b) Make ... .. TO BE ADVISED
- (c) Type ... STEAM TURBINE DRIVEN VERTICAL  
CENTRIFUGAL, SINGLE STAGE.
- (1) If reciprocating:  
State distance from suction valve plates to base line of vessel ... .. -"
- (2) If Centrifugal:  
State distance from centre of impeller to base line of vessel ... .. TO BE ADVISED
- (d) Size ... .. -"-

## FORM B (Continued)

Particulars to be  
Completed

## 13. CARGO PUMPS (Continued)

- (e) Designed rated capacity of each pump in cubic metres water per hour at 85 metres head at ship's manifold ... 4,500 c.m.p.h.
- (f) Estimated steam consumption of each pump when discharging to capacity as per (e) above ... TO BE ADVISED lbs. per hr.

## 14. STRIPPING PUMPS

- (a) Number and size ... 1 SET
- (b) Capacity of each pump in cubic metres water per hour at 85 metres head at ship's manifold ... 400 c.m.p.h.
- (c) EDUCTOR 800 m<sup>3</sup>/h x 35 m/HEAD ... 1 SET

## 15. HEATING COILS

- (a) Type of coils and material of which manufactured ...
- (b) Ratio of tank volume/heating surface:  
(1) Centre tanks ...  
(2) Side tanks ... NOT APPLICABLE
- (c) Height of coils from tank bottoms ...

## 16. SLOP TANKS AND TANK CLEANING

- (a) Is vessel fitted with a slop tank and able to fulfil Item 10 (a) in the Digest? ... SLOP TANK SYSTEM TO CONSIST OF ONE PRIMARY SLOP TANK AND ONE SECONDARY SLOP TANK WITH TOTAL CAPACITY OF APT. 7,000 m<sup>3</sup>
- (b) Type of tank cleaning equipment fitted ... FIXED TYPE
- (c) Type of gas extraction equipment fitted ... TO BE ADVISED

## 17. MOORING AND LIFTING EQUIPMENT

- (a) Does vessel conform with Item 13 in the Digest? ... NO
- (b) Safe working load of derrick or davit on poop deck ... 2 K tons
- (c) Safe working load of derricks in way of manifold ... 20 K tons
- (d) Safe working load of derrick for handling forehold cargo ... L tons
- (e) Type of winches (electric, steam etc.) ... STEAM

## 18. GENERAL

- (a) Are hull stress calculators fitted? ... YES
- (b) Cubic capacity of forehold ... NONE
- (c) Is forehold registered for low flash cargoes? ... NO
- (d) Does Radio equipment conform to Item 14 (a) (i) in the Digest? ... YES
- (e) Type of Radio Telephone fitted ... TO BE ADVISED
- (f) Type of Automatic Pilot fitted ... ELECTRIC 2-WAY STEERING TYPE
- (g) Type of Echo Sounder fitted ... SHALLOW TYPE (200 KHZ)



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Exhibit 2

FORM B (Continued)

	Particulars to be Completed
<b>18. GENERAL (Continued)</b>	
(h) Type of Radar fitted ... .. TWO SETS OF RELATIVE MOTION RADAR ... ..	
(i) Is Decca Navigator fitted? ... ..	YES
(j) Is submerged log fitted? ... ..	YES
(k) Are any auxiliaries run on gasoil? ... ..	NO
If so give details of consumption ... ..	—
(l) Type of power used for steering machinery ... ..	ELECTRIC HYDRAULIC
(m) Type of galley and fuel required ... ..	ELECTRIC
(n) Is Suez Canal Projector fitted? ... ..	TO BE ADVISED
(o) If vessel's dimensions compatible with Panama Canal transit will she comply with Panama Canal Regulations for the carriage of:	
(1) Grade "A" cargoes ... ..	—
(2) Grade "B" cargoes ... ..	—
(3) Grade "C" cargoes ... ..	—
(4) Grade "D" cargoes ... ..	—

N.B. When submitting this Form the following plans should be attached :-

- (1) General Arrangement Plan
- (2) Pumping Arrangement Plan
- (3) Plan of Cargo Tank Ventilating System
- (4) Characteristic Curves of Pumps if Centrifugal Pumps installed.

- "Digest" refers to Shell International Marine Limited's Digest of Charterers' Requirements dated September 1967 and any subsequent amendments thereto.

*[Handwritten signature]*

4th April, 1974

SSK 230 Final Particulars

Ships Name .....	ELEFTHEROUPOLIS
Official Number .....	4765
Callsign .....	A8AF
NRT .....	109,577.70
GRT .....	132,034.13
DWT (Summer) .....	281,010 LT (285,506 KT)
Draft (Summer) .....	21.795 m
LOA .....	340.00 M
LBP .....	324.00 M
Beam (Moulded) .....	53.50 M
Depth (Moulded) .....	28.40 M
Cargo Tank Capacity .....	337,422.5 M <sup>3</sup>
Ballast Tank Capacity .....	38,071.6 M <sup>3</sup>
Fuel Tank Capacity .....	F.O.: 15,109.8 M <sup>3</sup> D.O.: 243.3 M <sup>3</sup>
Fresh Water Tank .....	499.3 M <sup>3</sup>
Derrik SWL .....	20 M/T



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Exhibit 2

DELIVERY      CERTIFICATE

Name of Vessel : S.S. "Eleftheroupolis"  
Owners : The Sanko Steamship Co., Ltd.  
Charterers : New Foundland Refining Co., Ltd.

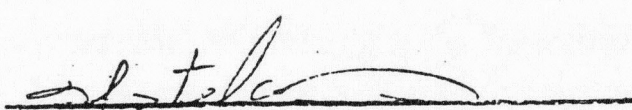
.....

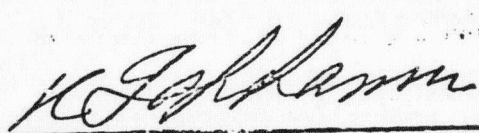
We, the under-signed, hereby certify that SS "Eleftheroupolis" has been delivered on time-charterers to New Foundland Refining Co., Ltd. the Charterers from The Sanko Steamship Co., Ltd., the owners at <sup>0107</sup> ~~0100~~ hrs on April 1st 1974 (~~0100~~ Hrs April 1st 1974 GMT) at which time there remained as follows.

Heavy Fuel Oil : 4,472.35 L/T  
Diesel Oil : 157.46 L/T  
Water :

Remarks : Replenished time-charterers bunkers as follows.  
on March 28th 1974.

Heavy Fuel Oil : 2,313.19 L/T  
Diesel Oil : 49.29 L/T

  
Master,  
SS "Eleftheroupolis"

  
Sasebo Harbor Transport Co., Ltd.  
On behalf of Charterers

  
Sasebo Harbor Transport Co., Ltd.  
on behalf of the Owners

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EXHIBIT 3--CHARTER PARTY (BARBARA T. SHAHEEN) ANNEXED  
TO AFFIDAVIT OF ROY M. FURMARK

BARBARA T. Shaheen

EXHIBIT 3

Covered for this Charter Party

"SHELLTIME 3"

Issued June 1973

Time Charter Party

LONDON

NEW YORK

New York, August 8, 1972

Mutual. Hull 960

Mutual Shipbuilding &amp; Charter (New York)

about 276,000 DWT at  
her draft about  
70 meters with  
mese, Liberian,  
mania, or Singapore

It is this day agreed between The Sanko Steamship Company Limited

of Tokyo, Japan (hereinafter referred to as "Owners"), being Owners of the  
newbuilding steam tank vessel of which Yard and Hull Number to be advised  
and of 1973  
(hereinafter referred to as "the vessel") described as per clause 24 hereof and Newfoundland Refining  
Company Ltd. St. John's, Newfoundland  
of (hereinafter referred to as "Charterers").

Description  
of Vessel

1. Owners guarantee that at the date of delivery of the vessel under this charter
  - (a) she shall be classed Nippon Kaiji Kyokai or equivalent
  - (b) she shall be in every way fitted for burning marine diesel oil or fuel oil with a maximum viscosity of 3500 seconds Redwood 1 at 100 degrees Fain main motors and any commercial grade of fuel oil under boilers; and
  - (c) she shall be fully equipped with all times of heating and maintaining cargo at a temperature of 10, 280 Kcal/K.G. (H.C.V.)

Condition  
of Vessel

2. Owners shall, before and at the date of delivery of the vessel under this charter, exercise due diligence to make the vessel
  - (a) in every way fit to carry crude petroleum and/or its products; and
  - (b) tight, staunch, strong, in good order and condition, in every way fit for the service, with her machinery, boilers and hull in such a state as to obtain the most economic working and with a full and efficient complement of master, officers and crew for a vessel of her tonnage.

Owners undertake that throughout the period of service under this charter they will, whenever the passage of time, wear and tear or any event (whether coming within clause 24 hereof or not) requires steps to be taken to maintain the vessel as stipulated in clause 1 hereof and in this clause or to restore the vessel to such condition, exercise due diligence to maintain or restore the vessel as aforesaid, and that they will comply with the regulations in force so as to enable the vessel to pass through the Suez and Panama Canals by day and night without delay.

Period and  
Trading Limits

3. Owners agree to let and Charterers agree to hire the vessel for a period of 8 (Eight) years, 14 (Fourteen) days more or less at Charterers option, commencing from the time and date of delivery of the vessel, for the purpose of carrying all lawful merchandise including in particular crude oil and/or its dirty petroleum products.

loading communist and  
unist controlled  
tries, Cuba and  
el ports, except  
Owners' prior  
sent which not to  
unreasonably withheld.

ort in Japan or at a  
or point not further  
distance from the  
ian Gulf than the  
of delivery

in any part of the world, as Charterers shall direct, subject to the limits of the current British Institute Warranties and any subsequent amendments thereof, it being understood that Charterers shall not send the vessel to ice-bound waters without Owners' consent but such consent shall not be unreasonably withheld.

Charterers shall exercise due diligence to ensure that the vessel is only employed between and at safe ports, places, berths, docks, anchorages and submarine lines where she can always lie safely afloat, but notwithstanding anything contained in this or any other clause of this charter, Charterers shall not be deemed to warrant the safety of any port, place, berth, dock, anchorage or submarine line and shall be under no liability in respect thereof except for loss or damage caused by their failure to exercise due diligence as aforesaid. Subject as above, the vessel shall be loaded and discharged in any dock or at any wharf or place or anchorage or submarine line or alongside lighters or other vessels as Charterers may direct.

The vessel shall be delivered by Owners at a port in Japan, or at a point not further in distance from Persian Gulf than Japan

at Owners' option and redelivered to Owners at Owners shall notify Charterers of the estimated time of delivery in written letter, telex or cable on 30 (thirty) days at least prior to delivery and at Charterers' option.

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## Exhibit 3

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## Exhibit 3

Passengers	15. Charterers may send passengers in the vessel's available accommodation upon any voyage made under this charter. Owners to pay provisions and all requirements supplied to officers except liquor. Charterers paying at the rate of US\$1,000 per day for each passenger while on board the vessel.	116 117 118
Sub-let	16. Charterers may sub-let the vessel, but shall always remain responsible to Owners for the due fulfillment of this charter.	119 120
Infected Area and Infraction of Local Law	17. Owners shall be liable for any delay in quarantine arising from the master, officers or crew having communication with the shore at any infected area without the written consent or instructions of Charterers or their agents, also for any loss of time through detention by customs or other authorities caused by smuggling or other infraction of local law on the part of the master, officers or crew.	121 122 123 124
Final Voyage	18. Should the vessel be on her way towards the port of redelivery at the time a payment of hire is due, payment of hire shall be made for such length of time as Owners and Charterers may agree upon as being the estimated time necessary to complete the voyage, less any disbursements made or expected to be made or expenses incurred or expected to be incurred by Charterers for Owners' account and less the estimated value of bunker fuel remaining at the termination of the voyage, and when the vessel is redelivered any overpayment shall be refunded by Owners or underpayment paid by Charterers. Notwithstanding the provisions of clause 3 hereof, should the vessel be upon a voyage at the expiry of the period of this charter, Charterers shall have the use of the vessel at the same rate and conditions for such extended time as may be necessary for the completion of the round voyage on which she is engaged and her return to a port of redelivery as provided by this charter.	125 126 127 128 129 130 131 132 133
Loss of Vessel	19. Should the vessel be lost, hire shall cease at noon on the day of her loss and, should the vessel be missing, hire shall cease at noon on the day on which she is first heard of, and any hire paid in advance and not earned shall be returned to Charterers. In a port which to be mutually agreed between Owners and Charterers.	134 135 136
Laying-up	20. Charterers shall have the option of laying up the vessel, in which case the hire provided for under this charter shall be reduced by the amount by which Owners can reasonably reduce the expenditure otherwise falling upon them under this charter.	137 138 139
Off-Hire	21. In the event of loss of time (whether arising from interruption in the performance of the vessel's service or from reduction in the speed of the performance thereof or in any other manner) (a) continuing for more than 24 hours, due to deficiency of personnel or stores, repairs, breakdown (whether partial or otherwise) of machinery or boilers, collision or stranding or accident or damage to the vessel or any other cause preventing the efficient working of the vessel; or (b) whether or not continuing for 24 hours, (i) due to strikes, refusal to sail, breach of orders or neglect of duty on the part of the master, officers or crew; or (ii) for the purpose of obtaining medical advice or treatment for or landing any sick or injured person (other than a passenger carried under clause 15 hereof) or for the purpose of landing the body of any person (other than such a passenger); hire shall cease to be due or payable from the commencement of such loss of time until the vessel is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced. Any such loss of time which arises wholly or partly from a reduction in the vessel's guaranteed average speed provided in clause 2 hereof shall be taken to be the difference between the time the vessel would require to perform the relevant service at the said speed and the time actually taken to perform the same and such loss of time shall be added to any loss of time arising from interruption in the performance of the vessel's service in order to arrive at the said period of 24 hours. Further and without prejudice to the foregoing, in the event of the vessel deviating (which expression includes putting back, or putting into any port other than that to which she is bound under the instructions of Charterers) for any cause or for any purpose previously mentioned in this clause, no hire shall in any case be payable as from the commencement of such deviation until the time when the vessel is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which the deviation commenced. In the event of the vessel, for any cause or for any purpose previously mentioned in this clause, putting into any port other than the port to which she is bound under the instructions of Charterers, the port charges, pilotage and other expenses at such port shall be borne by Owners. Should the vessel be driven into port or any anchorage by stress of weather hire shall continue to be due and payable during any loss of time caused thereby. In the event of detention of the vessel by authorities at home or abroad in consequence of legal action against Owners (unless brought about by the act or neglect of Charterers), whereby the vessel is rendered unavailable for Charterers' service, the vessel shall be off-hire until the service can again be resumed. If the nation to which the vessel belongs becomes engaged in hostilities, hire and all other charges shall cease during the continuance of such hostilities if Charterers in consequence of such hostilities find it impossible to employ the vessel and in that event Owners shall have the right to employ the vessel on their own account. All drydock charges shall be at Owners' expense. Time lost by the vessel gasfreed for repairs and in and waiting her turn to enter drydock shall, irrespective of duration, count as off-hire. Any loss of time during which the vessel is off-hire as provided in this and the succeeding clause shall count as part of the charter period. 22. Owners undertake that twelve months after the vessel was last drydocked and at the expiry thereafter of each twelve months of continuous use under the charter they will put the vessel in drydock and clean and paint her bottom at their expense as soon thereafter as Charterers place the vessel at Owners' disposal, clear of cargo, at a port having suitable accommodation for the purpose. Notwithstanding the provision in the preceding clause as to time lost by the vessel gasfreed, time lost in making tanks free of gas, as distinct from tank cleaning, for the purpose solely or primarily of periodical bottom cleaning and painting shall be for the account of Charterers provided Owners shall have exercised due diligence to make the tanks free of gas before the arrival of the vessel at the drydocking port or as soon as practicable thereafter.	140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185

Periodical Drydocking  
**TWELVE TO TWENTY-FOUR**  
**Owners**

*Ref 22*



Ref. ✓



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Exhibit 3

	[of the Country of the Flag of the Vessel]	
Disbursements	31. Should the master require advances for ordinary expenses at any port, Charterers or their agents shall make such advances to him, in consideration of which Owners shall pay a commission of 2 1/2 per cent, and all such advances shall be deducted from hire.	269 270 262
Requisition	32. Should the vessel be requisitioned by the Government during the period of this charter, the vessel shall be deemed to be off-hire during the period of such requisition, and any hire paid by the said Government in respect of such requisition period shall be for Owners' account. The period during which the vessel is on requisition to the said Government shall count as part of the period provided for in clause 3 of this charter.	263 264 265 266 267
Outbreak of War	33. If war or hostilities break out between any two or more of the following countries: United Kingdom, United States of America, Union of Soviet Socialist Republics, Peoples Republic of China, Canada, Japan, both Owners and Charterers shall have the right of canceling the charter, upon 60 days prior notice of the cancellations due to commencement of hostilities.	268 269 270 271
Additional War Expenses	34. Any extra expenses which may be incurred by Owners if the vessel has to trade in areas where there is war (de facto or de jure) shall be borne by Charterers, provided that before such expenses are incurred Charterers are given an opportunity to signify their approval.	272 273 274
War Insurance	35. War and/or mine risk insurance, if any, shall be for Owners' account, but notwithstanding the provisions of clause 5 hereof, war risk insurance on hull and machinery on a mutually agreed value in excess of the rate ruling at the date hereof shall be for Charterers' account. Any increase in war bonus to the Master Officer and Crew over and above that in effect on the date hereof shall be for Charterers' account.	275 276 277 278 279 280 281
War Risks	36. (1) The master shall not be required or bound to sign bills of lading for any blockaded port or for any port which the master or Owners in his or their discretion consider dangerous or impossible to enter or reach. (2) (A) If any port of loading or of discharge named in this charter or to which the vessel may properly be ordered pursuant to the terms of the bills of lading be blockaded, or (B) if owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions, or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the master or Owners in his or their discretion dangerous or impossible for the vessel to reach any such port of loading or of discharge, Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other port of loading or of discharge within the range of loading or discharge ports respectively established under the provisions of the charter (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereto is not in the master's or Owners' discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from Charterers within 48 hours after they or their agents have received from Owners a request for the nomination of a substitute port, Owners shall then be at liberty to discharge the cargo at any port which they or the master may in their or his discretion decide on (whether within the range of discharge ports established under the provisions of the charter or not) and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharge ports established under the provisions of the charter, the charter shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. However, if the vessel discharges the cargo at a port outside the range of discharge ports established under the provisions of the charter, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and/or discharging the cargo thereat shall be paid by Charterers or cargo owners. In this latter event Owners shall have a lien on the cargo for all such extra expenses. (3) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any other wise whatsoever given by the government of the nation under whose flag the vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risk insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations anything is done or is not done, such shall not be deemed a deviation. If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the bills of lading, the vessel may proceed to any port of discharge which the master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and Owners shall be entitled to freight as if discharge had been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the bills of lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by Charterers and/or cargo owners and Owners shall have a lien on the cargo for freight and all such expenses. Charterers shall procure that all bills of lading issued under this charter shall contain the foregoing clause so far as applicable to bills of lading.	282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323
Both to Blame Collision Clause	37. If the liability for any collision in which the vessel is involved while performing this charter falls to be determined in accordance with the laws of the United States of America, the following provision shall apply: "If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss, or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact."	324 325 326 327 328 329 330 331 332 333 334 335

*Ant. S.*



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Exhibit 3

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	Charterers shall procure that all bills of lading issued under this charter shall contain a provision in the foregoing terms, to be applicable where the liability for any collision in which the vessel is involved falls to be determined in accordance with the laws of the United States of America.	336 337 338
New Jason Clause	38. General average shall be payable according to the York/Antwerp Rules, 1950, and shall be adjusted in London but should adjustment be made in accordance with the law and practice of the United States of America, the following provision shall apply:-  "In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.  If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."  Charterers shall procure that all bills of lading issued under this charter shall contain a provision in the foregoing terms, to be applicable where adjustment of general average is made in accordance with the laws and practice of the United States of America.	339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354
Paramount Clause	39. Charterers shall procure that all bills of lading issued under this charter shall contain the following Paramount Clause:-  "This bill of lading shall  (1) in relation to the carriage of any goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland have effect subject to the provisions of the Carriage of Goods by Sea Act, 1924, and to the Rules contained in the Schedule thereto as applied by that Act and nothing herein contained shall be deemed a surrender by the Carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the said Act;  (2) in relation to the carriage of any goods from any port of shipment in territory in which legislation similar in effect to the Carriage of Goods by Sea Act, 1924, of the United Kingdom is in force, have effect subject to such legislation and to the Rules contained in the Schedule thereto as applied by such legislation and nothing herein contained shall be deemed to be a surrender by the Carrier of any of his rights or immunities under the said legislation or an increase of any of his responsibilities or liabilities under the said legislation; and  (3) in any other case have effect as if the contract of carriage herein contained were a contract of carriage to which the provisions of the Carriage of Goods by Sea Act, 1924, of the United Kingdom applied and the Carrier shall be entitled to the benefit of the privileges, rights and immunities conferred by the said Act and the Rules contained in the Schedule thereto as if the same were herein specifically set out.  If any term of this bill of lading be repugnant to the provisions of the said Act or to the said legislation to any extent, such term shall be void to that extent but no further."  40. (a) This charter shall be construed and the relations between the parties determined in accordance with the law of England.  (b) Any dispute arising under this charter shall be decided by the English Courts to whose jurisdiction the parties agree whatever their domicile may be.  Provided that either party may elect to have the dispute referred to the arbitration of a single arbitrator in London in accordance with the provisions of the Arbitration Act, 1950, or any statutory modification or re-enactment thereof for the time being in force. Such election shall be made by written notice by one party to the other not later than 21 days after receipt of a notice given by one party to the other of a dispute having arisen under this charter.	355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383
Law and Litigation	41. Charterers agree to reimburse Owners for TOVALOP (or any successor or substitute organization) insurance premium and costs.  42. Owners have the option to perform periodical drydocking in Japan with 90 days advance notice and Charterers to agree to send the vessel to Persian Gulf. In this case no hire shall be payable for the following period as offhire: From the time of passing Quoin Island for loading cargo of Owners account to Japan, to the time of passing Quoin Island for loading cargo of Charterers account from Japan after drydocking.	

THE SANKO STEAMSHIP CO., LTD.

NEWFOUNDLAND REFINING COMPANY LIMITED

*Isamu Nishikawa*  
Isamu Nishikawa, Managing Director  
Attorney in Fact

*Roy M. Furmark*  
Roy M. Furmark, Executive Vice President

DATE: August 8, 1972

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Exhibit 3

DELIVERY CERTIFICATE

THIS IS TO CERTIFY that Japanese registered steam tank vessel called "BARBARA T. SHAHEEN" (DWT 269,419 Long Tons) was duly delivered from Owners, The Sanko Steamship Co., Ltd. to Charterers, Newfoundland Refining Co., Ltd. at 11:30 Local Time, (02:30 G.M.T.), on 12th June, 1975., at Mitsui Shipbuilding & Engineering Co., Ltd., Chiba Works, in accordance with terms of the Time Charter dated August 8, 1972.

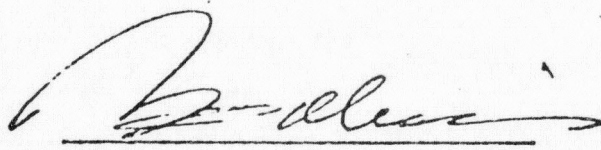
At that time followings were remained on board :-

Diesel Oil : 293.60 Long Tons.

Fuel Oil : 260.00 Long Tons.

Owners,  
The Sanko Steamship Co., Ltd.

Charterers,  
Newfoundland Refining Co., Ltd.

  
A. SAKAI  
Managing Director

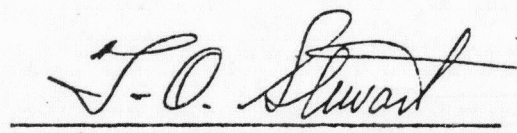
  
J.O. Stewart  
Vice Pres. Marine Operations



EXHIBIT 4--AGREEMENT DATED MARCH 20, 1968 ANNEXED  
TO AFFIDAVIT OF ROY M. FURMARK

March 20, 1968

AGREEMENT

During conversations held in New York between Shaheen Natural Resources Company, Inc., an Illinois corporation, having its principal place of business at 90 Park Avenue, New York, New York 10016 (SNR), and The Sanko Steamship Company, Ltd., a corporation established in Osaka, Japan, having its principal place of business at 2-25 Edobori, Kamidori, Nishi-ku, Osaka, Japan (Charterer), and Ataka & Co., Ltd., a corporation established in Japan, having its principal place of business at 14 Imabashi, 5 chome, Higashi-ku, Osaka, Japan (Broker) concerning the construction, bareboat chartering, use under a contract of affreightment and financing of combination carrier of 135,000-160,000 DWT (the Vessel), the following has been agreed:

I. PURPOSE

SNR will, through a Liberian subsidiary, enter into a contract with Broker, as contractor, for the construction of the Vessel at Charterer's designated shipyard, which will be a recognized Japanese shipyard. The Vessel, when completed, will be chartered to Charterer on a firm non-cancellable bareboat charter for a period of fifteen years. Charterer will enter into a long term contract of affreightment with Newfoundland Refining Company Limited (NRCL) on a firm non-cancellable basis, covering the Vessel and another vessel

owned by Charterer or its designee for a period of fifteen years, beginning from the delivery date of the Vessel to transport the maximum carrying capacity of the vessels covered by the long-term contract of affreightment, which is estimated to be approximately 1,000,000 long tons of crude oil per annum, from Persian Gulf to Come By Chance, Newfoundland. Charterer and NRC will also enter into a short-term contract of affreightment to begin in the first quarter of 1970 and to extend until the commencement of the long-term contract of affreightment or April 30, 1971, whichever is earlier, to transport approximately 500,000 long tons, 10% more or less at Charterer's option, of crude oil from Persian Gulf to Come By Chance, Newfoundland at a rate of US \$3.20/LT. For this short-term contract of affreightment, Charterer will supply its own vessels.

## II. TYPE OF VESSEL, DELIVERY, SHIPBUILDING TERMS

SNR has authorized Broker to obtain from the Charterer's designated shipyard, plans, specifications and prices on the Vessel to be owned by the Liberian subsidiary of SNR as identified in paragraph I. The building yard selected shall be subject to approval by SNR. The delivery of the Vessel shall be as close as possible to the first quarter of 1971.

Broker is also to ascertain the maximum possible credit facilities obtainable from the Japanese Government and/or Export Import Bank of Japan for construction of this type of Vessel.



The plans, specifications, prices and payment terms when assembled are to be submitted to SNR for its final decision as to the size of the Vessel and for its final agreement as to price and approval of payment terms and any credit facilities to be obtained from the Japanese Government and/or the Export Import Bank of Japan.

The final contract, building plans and the final specifications shall also be approved by the Charterer, SNR and the building yard.

The construction of the Vessel shall be carried out under the supervision of the Charterer, and SNR under the building contract shall have the right to have its own supervisors at the shipyard to review the plans and detailed drawings provided, however, that any negotiations with the shipyard shall be made through the Charterer. Charterer and SNR shall mutually agree on any changes to be made in such plans, detailed drawings and specifications. The building contract, including the payment terms thereof, shall be subject to approval of the Japanese Government.

### III. BAREBOAT CHARTER RATE

The calculation of the bareboat charter rate will be based on the following:

- (a) The DWT capacity of the Vessel;
- (b) The estimated cost of the Vessel;
- (c) A bareboat charter rate based on

twice the cost of the Vessel amortized at the required interest rate for financing over a fifteen-year period.

For example, assuming a 137,000 DWT capacity, a cost of \$13,700,000 complete, and an interest rate of 6.5%, the bareboat charter rate would be \$1.7422 per DWT per month.

#### IV. LONG TERM CONTRACT OF AFFREIGHTMENT RATE

A) Rate for vessel owned and to be operated by Charterer or its designee for cargo carried to Come By Chance, Newfoundland, from the Persian Gulf to be at a basic freight rate of U. S. Two Dollars and Seventy-five cents (U. S. \$2.75) per long ton of cargo. This rate is based on and subject to the following:

- (1) Building cost of the Vessel will not, at the time of signing the building contract, be substantially changed from the present level, of \$90-\$100/DWT.
- (2) Insurance rate for hull and machinery will be at present level when first year's rate fixed by Underwriters. Charterer refers to Underwriters current rate for the same type vessel as one percent (1%).
- (3) Actual time necessary for loading and discharging will be the same as that for a major oil terminal which is estimated to be within four days.



NRC will make an adjustment of freight rate in case certain changes occur on the above items and if and when Charterer requests them to do so, providing them with reliable data.

B) Rate for the Vessel will be calculated on the following basis, assuming that the final rate under IV A) would be US\$2.75, that the bareboat charter rate will be US\$1.7422 per DWT per month, and that the vessel would be of 137,000 DWT:

$$\text{US\$2.75} + \frac{(\text{bareboat charter rate} - \text{US\$0.8711}) \times 137,000 \text{ DWT} \times 12 \text{ months}}{390,000 \text{ LT}}$$

which, for a bareboat charter rate of US\$1.7422 per DWT per month, would yield:

$$\text{US\$2.75} + \frac{(\text{US\$1.7422} - \text{US\$0.8711}) \times 137,000 \text{ DWT} \times 12 \text{ months}}{390,000 \text{ LT}} = \text{US\$6.422 per LT}$$

Average rate for both vessels would be estimated at (US\$2.75 + US\$6.422) x 1/2 = US\$4.586 per long ton of cargo.

The details of terms and conditions, such as escalation clause, force majeure, etc., will be included in the formal contract of affreightment.

#### V. CONDITIONS

The transactions contemplated by this agreement are conditioned on fulfillment of the conditions listed below, the obtaining of satisfactory commitments on or prior to June 30, 1968 from the lending institutions referred to in paragraph VII, and the satisfaction of the terms and conditions of such commitments:

(a) Execution and delivery of this agreement pursuant to due authorization by all parties hereto, on or prior to April 1, 1968.

(b) Agreement by SNR, NRC and Charterer on the form of bareboat charter to be entered into between SNR's Liberian subsidiary and Charterer and the form of contract of affreightment to be entered into between Charterer and NRC, and agreement by SNR and Charterer on the form of the escrow agreement referred to in paragraph VI and the building contract and final plans and specifications of the vessel. Proposed forms of the bareboat charter and the contracts of affreightment will be submitted to all parties hereto within fifteen days after the execution and delivery of this agreement by all parties hereto.

VI. SECURITY FOR PERFORMANCE OF THE LONG TERM CONTRACT OF AFFREIGHTMENT

SNR will deposit under an escrow agreement, with a mutually satisfactory escrow agent, as security for performance by NRC of its obligations under the long term contract of affreightment, stock of a corporation, the identity of which shall be subject to approval by Charterer. Such approval shall be an additional condition to the transactions contemplated herein. The stock to be deposited with the escrow agent shall have a market value at the time of deposit of not less than one-half of the principal amount of the debt which is to be incurred by the Liberian subsidiary and secured by pledge of the bareboat charter.



Upon occurrence of an event of default under the long term contract of affreightment, the escrow agent shall be irrevocably authorized to sell the deposited stock under specific instructions of Charterer and apply the proceeds toward the prepayment of one-half of the principal amount of the debt of the Liberian subsidiary. The bareboat charter shall provide for the charter hire to be reduced in the same proportion in which the principal amount of the debt is reduced by such prepayment. At the end of each year of the term of the bareboat charter, the escrow agent shall deliver to SNR the stock, if any, whose value, based on the average market price of such stock for the preceding two months, is in excess of 120 per cent of one-half of the then outstanding principal amount of such debt.

#### VII. PROCEDURES

Upon the due authorization, execution and delivery of this agreement, SNR and its investment bankers (with such assistance from Charterer and Broker as SNR may reasonably request) will proceed to approach lending institutions with respect to obtaining commitments for the debt to be incurred in order to finance the Liberian subsidiary. Promptly after the commitments of the lending institutions have been obtained, the preparation of all instruments needed to carry out the financing will begin, and SNR and its investment bankers will begin negotiations for construction financing (giving consideration to the possibility of arranging for periodic takedowns from the long-term lending institutions to finance the construction).

VIII. THE PRIVILEGED NATURE OF THIS DOCUMENT

It is mutually understood and agreed by all parties to this agreement that this document is of a confidential nature and that its contents will not be divulged to any other party except in the necessary execution of the terms hereof. No disclosure of the fact that SNR or NRC is involved in this transaction will be made to any shipyard or any third parties to be contacted under this agreement unless specifically authorized in writing by SNR.

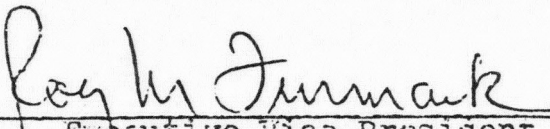
IX. INDEMNIFICATION

The fee payable to Broker shall be 1-1/2% of the basic freight rate. The basic charter rate for the bareboat charter will be US\$0.8711 per DWT per month. The basic freight rate for the short term contract of affreightment shall be US\$3.20/LT, and the basic freight rate for the long term contract of affreightment shall be the final rate determined under IV A. SNR's Liberian subsidiary shall pay the fee relating to the bareboat charter, and Charterer will pay the fee relating to the contracts of affreightment. The brokerage fee on the contracts of affreightment shall be payable on freights, deadfreights and demurrage. Broker hereby agrees to indemnify and hold harmless SNR, NRC, SNR's Liberian subsidiary and Charterer from and against any liability, for or in respect of any other brokers or agents' fees or commissions arising out

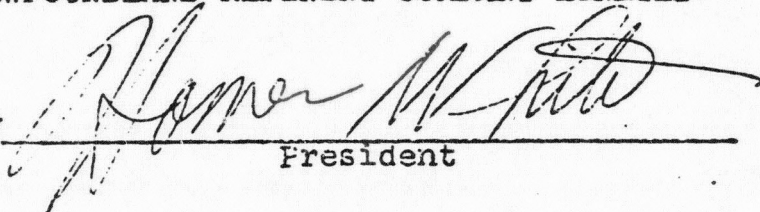


of or incurred in connection with the subject matter of this agreement (other than those of investment bankers of SNR).

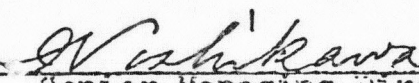
SHAHEEN NATURAL RESOURCES COMPANY, INC.

By   
Executive Vice President

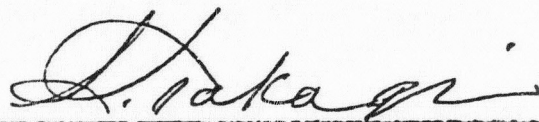
NEWFOUNDLAND REFINING COMPANY LIMITED

By   
President

THE SANKO STEAMSHIP COMPANY, LIMITED

By   
Senior Managing Director

ATAKA & CO., LTD.

By   
Director

A 67

EXHIBIT 5--AGREEMENT DATED AUGUST 8, 1972 ANNEXED  
TO AFFIDAVIT OF ROY M. FURMARK

A G R E E M E N T

between

NEWFOUNDLAND REFINING COMPANY LIMITED

and

THE SANKO STEAMSHIP COMPANY LIMITED

DUPLICATE



A 68  
Exhibit 5

August 8, 1972

A G R E E M E N T

IT IS HEREBY UNDERSTOOD AND AGREED between Newfoundland Refining Company Limited (hereinafter referred to as "Charterers") and The Sanko Steamship Company Limited (hereinafter referred to as "Owners") as follows.

1. Time Charter Party dated December 23, 1970 for MHI Hull No. 1701 and Voyage Charter Party dated December 23, 1970 for Contract of affreightment between Charterers and Owners shall be cancelled, subject however to the satisfactory conclusion of Time Charter Parties of the vessels noted hereunder.
2. Following Charter Parties shall be closed between Charterers and Owners :
  - A. Time Charter

Vessel	: abt. 233,000 DWT Tanker (MHI Hull No. 1701) Japanese, Liberian, Panamanian or Singapore flag : Classed NK or equivalent : abt. 19.81 meters draft : Other particulars to be advised by FORM B of "SHELLTIME 3"
Period	: 10 (Ten) years time Charter 14 days more or less at Charterers option
Laydays	: August 15, 1973
Cancelling	: October 15, 1973

A 69

Exhibit 5

Delivery/Redelivery : at a port in Japan or at a point not further  
in distance from Persian Gulf than Japan

Performance : Guarantee speed average laden and ballast  
16.50 knots on daily consumption of 160 long  
tons fuel oil

Hire : U.S. Dollars 2.53 (Two dollars fifty three  
cents) per long ton on Vessel's total  
deadweight on classified summer freeboard per  
calendar month

Charter Party form : "SHELLTIME 3"

Other terms and conditions : as per Time Charter Party dated Dec. 23, 1970  
between Charterers and Owners

Combined with

B. Contract of Affreightment at Charterers option to be declared by  
December 31, 1972 as follows :

Quantity : 1,000,000 long tons 10% more or less at Owners,  
option

First shipment : September/October, 1973 at Persian Gulf

Last shipment : March/April, 1974 at Persian Gulf

Cargo size : 100,000 tons/270,000 tons

Freight Rate : WORLDSCALE 58.6% as amended (equivalent T/C  
Rate U.S.\$2.40 on SASEBO Hull No. 230)

Charter Party form : "SHELLVOY 3"

Other terms and conditions : as per Voyage Charter Party dated December  
23, 1970 between Charterers and Owners



A 70

Exhibit 5

Combined with

C. Time Charter

Vessel : abt. 271,000 DWT Tanker (SASEBO Hull No. 230)  
: Japanese, Liberian, Panamanian or  
Singapore flag  
: Classed NK or equivalent  
: abt. 21.30 meters draft  
: Other particulars to be advised FORM B of  
"SHELLTIME 3"

Period : 9½ (Nine years and six months) years  
Time Charter 14 days more or less at Charterers  
option,  
However, in case Charterers declare not to  
perform B. Contract of Affreightment, the  
total period of this Time Charter to be 10 (Ten)  
years 14 days more or less at Charterers' option.

Laydays : April 1, 1974

Cancelling : May 31, 1974

Delivery/Redelivery : at a port in Japan or at a point not further in  
distance from Persian Gulf than Japan

Performance : Guarantee speed average laden and ballast 16.10  
knots on daily consumption 175 long tons fuel oil

Hire : U.S. Dollars 2.40 (Two dollars forty cents)  
per long ton on Vessel's total deadweight on  
classified summer freeboard per calendar month

Charter Party form : "SHELLTIME 3"

Other terms and conditions : as per Time Charter Party dated December 23,  
1970 between Charterers and Owners

A 71

Exhibit 5

Combined with

D. Time Charter

Vessel : abt. 276,000 DWT Tanker (Yard and Hull Number  
to be advised by end of 1973)  
: Japanese, Liberian, Panamanian or Singapore  
flag  
: Classed NK or equivalent  
: abt. 21.70 meters draft  
: Other particulars to be advised FORM B of  
"SHELLTIME 3"

Period : 8 (Eight) years time charter 14 days more or  
less at Charterers option

Laydays : January 1, 1975

Cancelling : June 30, 1975

Delivery/Redelivery : at a port in Japan or at a point not further  
in distance from Persian Gulf than Japan

Performance : guarantee speed average laden and ballast  
16.10 knots on daily consumption 175 long tons  
fuel oil

Hire : U.S. Dollars 2.22 (Two dollars twenty two cents)  
per long ton on Vessel's total deadweight on,  
classified summer freeboard per calendar month

Charter Party form : "SHELLTIME 3"

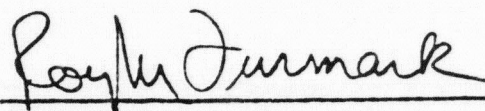


A 72

Exhibit 5

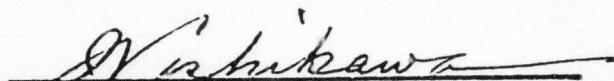
Other terms and conditions : as per Time Charter Party dated December 23, 1970 between Charterers and Owners

Newfoundland Refining Company Limited



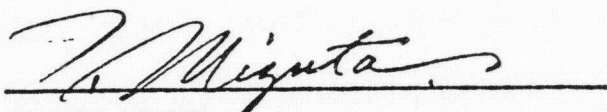
ROY M. FURMARK  
Executive Vice President

The Sanko Steamship Company Limited



ISAMU NISHIKAWA  
Managing Director

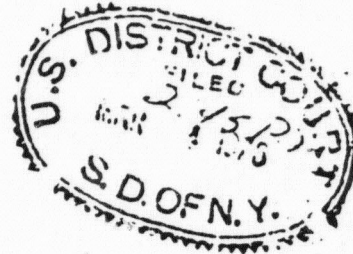
Ataka & Co., Ltd.  
as brokers only



TOSHIO MIZUTA  
Executive Vice President & Director

## MEMORANDUM AND ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- -x  
THE SANKO STEAMSHIP CO., LTD., :

Plaintiff, :

- against - :

MEMORANDUM AND ORDER

NEWFOUNDLAND REFINING COMPANY, LIMITED, :  
NEWFOUNDLAND REFINING COMPANY LIMITED :  
U.S.A., PROVINCIAL BUILDING COMPANY :  
LIMITED, PROVINCIAL REFINING COMPANY :  
LIMITED and SHAHEEN NATURAL RESOURCES :  
COMPANY, INC., :

76 Civ. 756

Defendants. :

----- -x  
KNAPP, D.J.

The plaintiff, pursuant to Admiralty Rule B(1) and F.R.C.P. 64, has invoked "the remedies provided by state law for attachment" and seeks to levy upon certain New York bank balances claimed to be owing to some or all of the defendants. The particular provision of state law which plaintiff has invoked is C.P.L.R. §6201, which so far as relevant, provides:

"An order of attachment may be granted in any action, . . . where the plaintiff has demanded and would be entitled, . . . to a money judgment against one or more defendants, when:

1. the defendant is a foreign corporation or not a resident or domiciliary of the state;" [emphasis supplied]



Plaintiff duly filed an action in this court alleging breach by defendants of a time charter party agreement. In order to avoid the pitfalls suggested in Sugar v. Curtis Circulation Co. (S.D.N.Y. 1974) 383 F.Supp. 643, plaintiff did not request the court to issue an attachment ex parte, but sought such relief by an appropriate  
1/  
Order to Show Cause.

2/  
Thus forewarned, the defendant countered with a motion to dismiss the underlying action, contending that if such motion were granted there would be no "action" to provide the underpinnings of an attachment under the above-quoted statute. For reasons which follow, we believe that defendants' position is well-taken, that the action should be dismissed, and, accordingly, that there is no basis for an attachment.

#### DISCUSSION

The underlying action against the defendants is for breach of contract. The contract sued upon, however, contains a forum selection clause confining actions for disputes arising thereunder to the Courts of England. Thus the contract provides:

"40. (a) This charter shall be construed and the relations between the parties determined in accordance with the law of England.

(b) Any dispute arising under this charter shall be decided by The English Courts to whose jurisdiction the parties agree whatever their domicile may be:

Provided that either party may elect to have the dispute referred to the arbitration of a

single arbitrator in London in accordance with the provisions of the Arbitration Act, 1950, or any statutory modification of re-enactment thereof for the time being in force."

It is defendants' contention that this clause is valid and precludes the plaintiff from invoking the jurisdiction of this court and, therefore, requires that the action be dismissed. We find that defendants' position is conclusively established by Bremen v. Zapata Off Shore Co. (1972) 407 U.S. 1. That case laid at rest any doubt as to the enforceability of such clauses and specifically held that they were applicable to in rem actions. <sup>3/</sup> Id. at 20. Plaintiff correctly points out that no question of the validity of an attachment was before the Court in that case. <sup>4/</sup> However, we deem that circumstance to be irrelevant. The Supreme Court was obviously not concerned with the provisions of New York C.P.L.R. §6201. What it did establish was a rule of law which entitles defendants to a dismissal of this action. Such dismissal makes an attachment unavailable under <sup>5/</sup> C.P.L.R. §6201.

Ordinarily this ruling, making any attachment unavailable, would make it unnecessary to determine against which of the several defendants a duly issued attachment would have been effective. <sup>6/</sup> However, the Court of Appeals has indicated a desire to have a full record before it, so we shall proceed to make findings on this latter issue.



With respect to the attachability of the funds of the defendants other than the first named defendant (assuming an otherwise valid attachment) we find as follows:

- (a) On the papers before us plaintiff has not born the burden of establishing its entitlement to an attachment of the funds of any but the first named defendant; however,
- (b) under the doctrine announced in Judge Moore's opinion in National Marine Service Inc. v. C. J. Thibodeaux & Company (5th Cir. 1974) 501 F.2d 940 (by which we are persuaded), plaintiff has shown enough to entitle it to conduct further discovery on this issue.

Accordingly, for reasons more fully stated on the record in open court, should the Court of Appeals reverse my decision as to the applicability of Bremen (and issue no further instructions) I shall immediately issue an attachment as to the first named defendant, and hold the matter in status quo as to the remaining defendants, referring the issue as to their status to a Magistrate with instructions to supervise discovery and to hear and report.

In the meantime, for the reasons stated in the first part of this opinion, the action is dismissed and the TRO is vacated.

The order vacating the TRO is, however stayed until March 11, 1976 at 5:00 P.M. on condition that:

1. All defendants may make disbursements from the accounts in the Sumitomo Bank, Ltd., the European-American Bank & Trust Co., and Manufacturers Hanover Trust Company, based upon the undertaking of all defendants to plaintiff that the only payments which will be made from such bank accounts will be payments of current accounts in the ordinary course of business; conformance with such undertaking of defendants shall not be the responsibility of said banks.
2. In the event the attachment of any of said bank accounts should be reinstated such attachment shall be deemed to have been made upon the amounts in each of said accounts as of the date and hour each of such banks were served with a copy of the temporary restraining order dated February 17, 1976, and plaintiff shall be deemed to have an attachment lien on the company's cash proceeds to the extent thereof.
3. The security posted by plaintiff shall be extended until 5:00 P.M. March 11, 1976.
4. Anything in the foregoing to the contrary notwithstanding, the banks may honor any checks presented



A 78

*Memorandum and Order*

to them on any of the accounts subject to the  
restraining order, it being the defendants'  
responsibility to see that their representations  
are carried out.

SO ORDERED. :

Dated: New York, New York

March 4, 1976.

  
WHITMAN KNAPP, U.S. D.C.

FOOTNOTES

1/

Contained in said Order to Show Cause, which the Court made returnable 3 days later, was a temporary restraining order, enjoining defendants from removing or releasing \$3,000,000 from their respective New York bank accounts. This TRO was later modified on certain conditions which allowed the defendants to conduct their daily business affairs.

2/

This "motion" was made orally on the record, since the press of time did not permit of the formal filing of the appropriate papers.

3/

The Court did leave open, however, the question of whether the clause there involved was "invalid for such reasons as fraud or overreaching" or whether the enforcement of such clause "would be unreasonable or unjust" *Id.*, at 15. In order to meet that burden, the Court observed that the party seeking to escape the forum selection clause must demonstrate that trial in the contractual forum "will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court". *Id.*, at 18. At oral argument before us, the instant plaintiff conceded that it could make no such showing.

4/

The parties in Bremen specifically eliminated that issue by agreeing upon the posting of security that was to be available in London as well as Florida. See 407 U.S. 1, 4, n.3, as explained by Petitioner's Reply Brief on certiorari, at p. 10.

5/

We note in passing that nothing turns on the circumstance that plaintiff proceeded by Order to Show Cause rather than by procuring an ex parte attachment. Had the latter course been followed, a dismissal of the action would have instantly triggered a vacatur of the attachment. So far as we know, there is no provision of New York law which would authorize holding an attachment "in limbo" pending the outcome of litigation going forward in some other jurisdiction.



6/

Since \$3,000,000 and a possible question of law of first impression are here involved, plaintiff wished to and did immediately appeal my decision. Before agreeing to hear the case on the merits, the Court of Appeals remanded same to this court for the purposes of establishing a complete record with respect to the relationship between the several defendants and the plaintiff.

CONSENT ORDER AMENDING MEMORANDUM AND ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
THE SANKO STEAMSHIP CO., LTD.,  
:  
Plaintiff,  
:

-against-

ORDER

NEWFOUNDLAND REFINING COMPANY, LIMITED,  
NEWFOUNDLAND REFINING COMPANY LIMITED : 76 Civ. 756  
U.S.A., PROVINCIAL BUILDING COMPANY :  
LIMITED, PROVINCIAL REFINING COMPANY :  
LIMITED, PROVINCIAL HOLDING COMPANY :  
LIMITED and SHAHEEN NATURAL RESOURCES :  
COMPANY, INC., :  
:  
Defendants.  
-----X

WHEREAS on March 4, 1976, the HONORABLE WHITMAN KNAPP, U.S.D.J., signed a Memorandum and Order in the above action, a copy of which is attached hereto; and

WHEREAS, on or about March 9<sup>th</sup>, 1976, the HONORABLE WILLIAM H. MULLIGAN, Judge of the United States Court of Appeals for the Second Circuit, stayed the Order issued by JUDGE KNAPP vacating the Temporary Restraining Order herein until March 16, 1976; and

WHEREAS the United States Court of Appeals for the Second Circuit has this day ordered an expedited appeal on the sole issue of whether this Court was correct in dismissing the complaint herein on the basis of Bremen v. Zapata Off-Shore Company, 407 U.S.1, (1971);

NOW, THEREFORE, on consent of the parties, it is  
ORDERED



*Consent Order Amending Memorandum and Order*

1. The attached Memorandum and Order dated March 4, 1976, is hereby amended to delete therefrom the following:

Ordinarily this ruling, making any attachment unavailable, would make it unnecessary to determine against which of the several defendants a duly issued attachment would have been effective. However, the Court of Appeals has indicated a desire to have a full record before it, so we shall proceed to make findings on this latter issue.

With respect to the attachability of the funds of the defendants other than the first named defendant (assuming an otherwise valid attachment) we find as follows:

- (a) On the papers before us plaintiff has not born the burden of establishing its entitlement to an attachment of the funds of any but the first named defendant; however,
- (b) under the doctrine announced in Judge Moore's opinion in National Marine Service Inc. v. C. J. Thibodeaux & Company (5th Cir. 1974) 501 F. 2d 940 (by which we are persuaded), plaintiff has shown enough to entitle it to conduct further discovery on this issue.

Accordingly, for reasons more fully stated on the record in open court, should the Court of Appeals reverse my decision as to the applicability of Bremen (and issue no further instructions) I shall immediately issue an attachment as to the first named defendant, and hold the matter in status quo as to the remaining defendants, referring the issue as to their status to a Magistrate with instructions to supervise discovery and to hear and report.

Consent Order Amending Memorandum and Order

2. As concerns the attachability of the funds of the named defendants, other than NEWFOUNDLAND REFINING COMPANY LIMITED, this issue <sup>will be</sup> ~~is hereby~~ referred to MAGISTRATE <sup>a</sup> to be determined with instructions to supervise discovery as to the commonness of said defendants and the right of the plaintiff to obtain a valid attachment against their funds and credits and to further report his findings and conclusions to me;

IT IS FURTHER ORDERED that the Order of JUDGE WILLIAM H. MULLIGAN staying the Order of March 4, 1976 vacating the Temporary Restraining Order is hereby extended for ten days after I issue further findings of facts and conclusions of law based upon the findings of MAGISTRATE

DATED: New York, N.Y.  
March 16th, 1976.

WHITMAN KNAPP

Consented to:  
Bigham Englar Jones & Houston

WHITMAN KNAPP  
So ordered.

BIGHAM ENGLAR JONES & HOUSTON  
Attorneys for Plaintiff  
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New York, N.Y. 10038  
(212) 732-4646

Manning Carey & Redmond

MANNING, CAREY & REDMOND  
Attorneys for Defendants  
Office and P.O. Address  
122 East 42nd Street  
New York, N.Y. 10017



~~One and timely~~ Service of <sup>THREE</sup> ~~one~~ copies  
of the within APPENDIX is hereby  
submitted this 5th day of April 1976

.....  
Manning, Gary T. Redman  
Attorney for APPELLANTS